

Tryals for high-treason, and other crimes with proceedings on bills of attainder, and impeachments, for three hundred years past, to which are prefix'd a preface, giving an account of the nature and usefulness of the work and an alphabetical table of the respective persons try'd, and the
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T R Y A L S

F O R

High-Treason,

A N D

O T H E R C R I M E S.

W I T H

P R O C E E D I N G S

O N

Bills of Attainder,

A N D

I M P E A C H M E N T S.

For Three Hundred Years Past.

To which are prefix'd,

A P R E F A C E, giving an Account
of the Nature and Usefulness of the Work.

A N D

An A L P H A B E T I C A L T A B L E of
the respective P E R S O N S Try'd, and the
P o i n t s of L a w Debated and Adjudg'd.

*By the S A M E H A N D that prepared the Folio
Edition for the P R E S S.*

P A R T V.

L O N D O N :

Printed for D. Browne, G. Straban, W. Mears, R. Gosling,
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THE
PROCEEDINGS
OF THE
JURY
IN
THE
CASE
OF
THE
BANK
OF
AMERICA
IN
THE
CITY
OF
NEW
YORK
IN
THE
YEAR
1834



AN ALPHABETICAL TABLE OF
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THE

TRIALS

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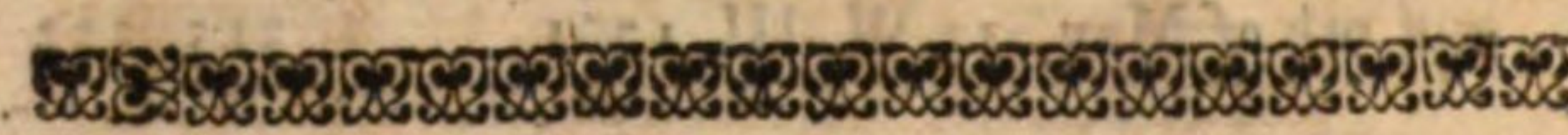
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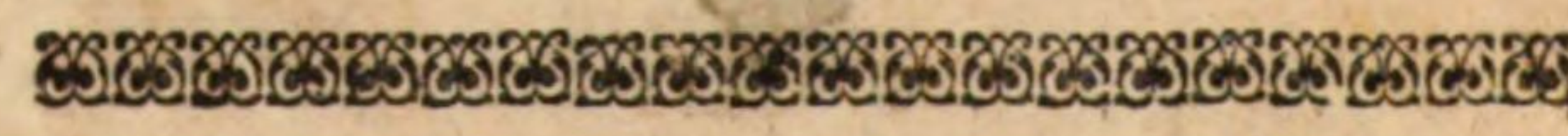
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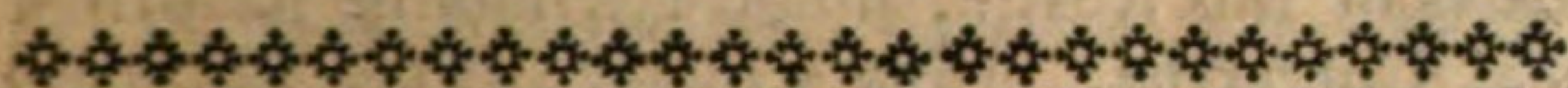
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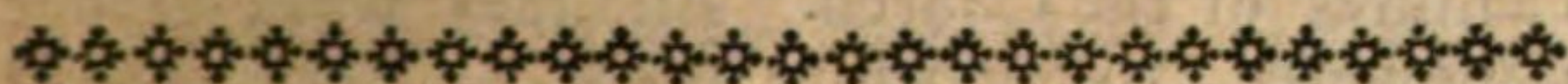




STATE TRYALS.



VOL. III. PART. II.



*Proceedings against the Lord
Bishop of London, in the
Council-Chamber at White-
hall, before the Lords Com-
missioners appointed by his
Majesty to inspect Ecclesi-
astical Affairs, 2 Jac. II.
1686.*

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THE King's Ecclesiastical Commis-
sion, was directed to *William*, Lord
Archbishop of *Canterbury*, *George*
Lord *Geffries*, Lord Chancellor
of *England*, *Lawrence* Earl of *Ro-*
chester, Lord Treasurer, *Robert* Earl
of *Sunderland*, President of the Council, and Prin-
cipal Secretary of State; *Nathaniel*, Lord Bi-
shop

The Commis-
sion for Eccle-
siastical Af-
fairs, &c.

shop of *Durham, Thomas*, Lord Bishop of *Rochester*, and to Sir *Edward Herbert*, Lord Chief Justice. Authorizing the said Commissioners, or any three or more of them, whereof the Lord Chancellour to be one, from Time to Time, and at all Times, during his Majesty's Pleasure, to Exercise and Execute all manner of Ecclesiastical Jurisdiction within this Realm; and to Visit, Reform, and Correct, all such Abuses, Offences, and Contempts, as by the Spiritual or Ecclesiastical Laws of this Realm, might lawfully be Reform'd and Corrected, in any County, City, Borough, or other Place, Exempt or not Exempt: And the Offenders therein, to Correct and Punish, by Censures of the Church. And they were farther impowered, to call before them, all Ecclesiastical Persons, of what Degree or Dignity soever they were; and such of them as should offend in the Premises, to correct and punish, by Suspending, or Depriving them of all Promotions Ecclesiastical, and from all Functions in the Church; and inflicting such other Punishments, as by the Ecclesiastical Laws of this Realm might be inflicted.

And further to inquire of, &c. and punish all Incests, Adulteries, Fornications, Outrages, Misbehaviours, and Disorders in Marriage, and all other Grievances, great Crimes and Offences, punishable by the Ecclesiastical Laws. And to examin upon Oath, all Persons suspected to be Guilty of any of the aforesaid Crimes. And the said Commissioners, or any Five of them, whereof the said Lord Chancellour to be one, were farther Authoriz'd, to Cause and Command, all, and singular the Ordinances, Rules, and Statutes of the Universities; and all and every Cathedral and Collegiate Churches, Colleges, Grammar Schools, and other Ecclesiastical Incorporations; together with their several Letters Patents, and other Writings concerning their several Erections and Foundations, to be brought and exhibited before them. And upon View and Examination of the said Statutes, &c. the same to Correct, Amend, and Alter; and where no Statutes were Extant, to devise and set down

down such Orders and Statutes, as they, or any Five or more of them, whereof the said Lord Chancellor to be one, should think meet and convenient. And that the said Commissioners, should have one common Seal, to be affix'd to all their Orders, Processess, Decrees, &c. And all other his Majesty's Ministers, Officers and Subjects, were commanded to be Aiding and Assisting to the said Commissioners, in the Executing their Precepts, &c.

On *Thursday*, the 17th of *June*, Mr. *Atterbury* the Messenger, deliver'd a Letter from his Majesty, to my Lord Bishop of *London*, at *Fulham*; which Letter was dated *Monday*, *June* the 14th, and took Notice, "That notwithstanding the Directions his Majesty had given concerning Preachers, the 15th of *March*, 1685. Dr. *John Sharp* had, in some Sermons, presum'd to make unbecoming Reflections; and us'd such Expressions, as tended to beget in the Minds of his Hearers, an evil Opinion of his Majesty, and his Government, and to dispose the People to Rebellion. And therefore commanded the Bishop to suspend the said Dr. *John Sharp* from Preaching, till his Majesty's Pleasure were further known.

In Answer to which, my Lord Bishop of *London* wrote to my Lord *Sunderland* the next Day, being the 18th of *June*, and sent the Letter by Dr. *Sharp*. Wherein he acquaints my Lord *Sunderland*, "He was concern'd he could not comply with his Majesty's Commands: That being to act as a Judge in this Case, he could not Condemn the Doctor till he had been Cited, and he had knowledge of the Cause; but that he had sent to the Doctor, and acquainted him with his Majesty's Displeasure, and found him so ready to make all reasonable Satisfaction, that he had thought fit to make him the Bearer of this Answer.

The *Sunday* following, Dr. *Sharp* carried a Petition to *Windsor*, which was not permitted to be Read.

Page 695.
The King's Letter to the Bishop of London, to suspend Dr. Sharp.

The Bishop's Answer to my Lord Sunderland, sent by Dr. Sharp.

Dr. Sharp's Petition to the King.

The Substance of the Petition was, That nothing could be so afflictive as his Unhappiness in having incurr'd his Majesty's Displeasure, which he was so sensible of, that he had forborn all publick Exercise of his Function ever since.

That he had ever faithfully endeavoured to do the best Service he could, as well to the late King, as his Majesty, both by Preaching, and otherwise; and that he had been so far from venting any Thing that tended to Schism or Faction, or the Disturbance of the Government, that he had, upon all Occasions, set himself against such Doctrines and Principles, as look'd that Way. But if any Thing had slip't from him, that was capable of giving any Offence to his Majesty, he declared he had no ill Intentions in those Expressions, and was heartily sorry for them; and that he would be so careful, in the discharge of his Duty for the future, that his Majesty should have reason to believe him his most faithful Subject; and therefore desired to be restored to the same Favour the rest of the Clergy enjoyed under his Majesty's Government.

Page 696.
The Bishop of London summon'd before the High Commission.

On *Wednesday* the 4th of *August*, 1686, my Ld. Bishop of *London* appear'd before the Commissioners, according to their Summons, at the Council Chamber at *Whitehall*; present, the Lord Chancellor, Lord Bishop of *Durham*, Lord Treasurer, Lord Bishop of *Rocheſter*, Lord President, Lord Chief Justice *Herbert*.

The Lord Chancellor demanded, Why my Ld. Bishop of *London* had not suspended Dr. *Sharp*, according to the King's Command?

The Lord Bishop of *London* answer'd, That he was advis'd he could not legally do it, but by Way of Citation and Hearing him.

Lord Chancellor. You ought to have known the Law better: The King's to be Obey'd, and if you have any Reasons to offer, we are ready to hear you.

The Bishop demands a sight of their Commission, but is deny'd.

The Lord Bishop of *London* desired a Copy of their Commission, and a Copy of his Charge; and if he might not have a Copy of their Commission, that he might Read it, or hear it Read. Then he was order'd to withdraw; and being call'd again in

in about a quarter of an Hour, the Lord Chancellor acquainted him, That the Commissioners were of Opinion, his Request could not be Granted: That if every one that appeared there, should demand a Sight of their Commission, their whole Time would be taken up in Reading of it. That the Proceedings of Courts of this kind, were not by Libel and Articles, but by Word of Mouth; and it was a short Question only they ask'd, *Why he did not obey the King?*

My Lord Bishop of *London*, desired the Commissioners to consider he was a Peer, and a Bishop, and he desired to behave himself as becomes one in those Capacities; and hop'd they would give him Time, till the next Term, to make his Defence.

Desires Time for his Defence.

The Commissioners said, they thought that unreasonable, but they would give his Lordship a Weeks Time; and then adjourn'd to the 9th of *August*,

Is allow'd a Weeks Time.

On the 9th of *August*, the same Commissioners being present, my Lord Bishop of *London* came before them, attended by his Nephew, the Earl of *Northampton*, Sir *John Nicholas*, and his Brother, Sir *Francis Compton*,

Page 697.

My Lord Bishop of *London* said, he had not been able to meet with their Commission, till the Night before, though he was told, he might see it in every Coffee-House.

The Lord Chancellor answer'd, they would admit no Quarrelling at their Commission; they were well assur'd of the Legality of it, or they would not be such Fools to sit there.

He insists on a fight of their Commission, but is deny'd again,

My Lord Bishop of *London* said, he desir'd a Sight of their Commission, because, possibly, it might not reach him, being a Peer, and a Bishop; and that he had not had Time to advise about it, and therefore desir'd a Fortnight longer, (*which was Granted.*)

He has a Fortnight more to prepare for his Defence.

On *Tuesday* the 23d Day of *August*, my Lord Bishop of *London* appear'd before the same Commissioners again.

Lord Bishop. My Lord, I have Consulted those that are very Learned in the Laws, who tell me, that your Proceedings in this Court, are directly

contrary to the Statute Law; and they are hear to plead it, if your Lordship will admit them.

Lord Chancellor. We will neither hear your Lordship nor your Council, in the Matter: We are sufficiently satisfied of the Legality of our Commission.

Lord Bishop. My Lord, I am a Bishop of the Church of *England*; and by all the Law in the Christian Church, in all Ages, and by the particular Law of this Land, I am, in Case of Offence, to be Try'd by my Metropolitan and Suffragans: I hope your Lordship will not deny the Rights and Privileges of Christian Bishops.

Lord Chancellor. My Lord, you know our Proceedings are according to what has been done formerly, and that we have an Original Jurisdiction; this is still questioning our Court.

Lord Bishop. My Lords, Protesting in my own Right to the Laws of the Realm, as a Subject, and the Rights and Privileges of the Church, as a Bishop, I shall give in my Answer.

The Answer was accepted, and the Bishop withdrew; and after half an Hour, the Bishop and his Council were call'd in, who were Dr. *Oldish*, Dr. *Hodges*, Dr. *Price*, and Dr. *Newton*; whom the Bishop desir'd might be heard.

They argued, that the Words of the King's Letter being, *That you suspend him from Preaching.* This could not be done by our Laws, without a Citation, and proceeding to Judgment thereupon. But if by that Expression, only the Silencing the Doctor was intended, then the Bishop had Executed the King's Commands in such a Method, as is observ'd in their Courts.

For where an Eminent Person is accus'd, the Judges send him a Letter; and if he appears, and complies with the Judges Order, the Law is satisfied. Here the Bishop sent for Dr. *Sharp*, and advis'd him not to Preach, till the King had received Satisfaction: And he had observ'd his Lordship's Directions, and had not Preach'd to this very Day; so that his Majesty's Command, was in Effect fulfill'd. That the Bishop had done what was his Duty; he was bound to return his Reason to the

King,

Insists, He ought to be Try'd by his Metropolitan and Suffragans.

His Protest.

Page 698.

The Bishop's Defence.

King, why he did not do that which he Commanded, and to expect his farther Answer; which was done. That if a Prince or Pope command any Thing unlawful, it is the Duty of a Judge *Rescribere Principi*, and attend his further Pleasure, and this is all he can do. That as in Nature, no Man can be oblig'd to do that which is impossible; so no Man can be oblig'd to do an unlawful Act.

Lord Bishop. If through Mistake, I have err'd in any Circumstance, I am ready to beg his Majesty's Pardon, and shall be ready to make any Reparation I am capable.

The Bishop withdrew for half an Hour, and then was call'd in, and acquainted, that the Commissioners would be there again on *Wednesday* next, when his Lordship was directed to attend.

Die Luna 6 Septemb. 1686.

Lord Chancellor. You were desired to appear this Day, to hear your Sentence; which, to prevent Mistake, we have order'd to be put in Writing.

Lord Bishop. My Lord, May I have Leave to speak, before Sentence is read?

Lord Chancellor. My Lord, We have heard you and your Council already.

Then the Instrument of Suspension was Read by Mr. *Bridgman*, their Lordships Register; viz.

By his Majesty's Commissioners for Ecclesiastical Affairs, &c.

Whereas, Henry, Lord Bishop of London, hath been Convened before us, for his Disobedience, and other his Contempts, mentioned in the Proceedings of this Cause; and the said Bishop being fully heard thereupon, We have thought fit, upon mature Consideration of the Matter, to proceed to this our definitive Sentence; Declaring, Pronouncing, and Decreeing, That the said Henry, Lord Bishop of London, shall, for his said Disobedience and Contempt, be Suspended during his Majesty's Pleasure. And accordingly we do, by these Presents, Suspend him the said Lord Bishop of London; peremptorily admonishing and requiring him, hereby, to abstain from the Function and Execution of his Episcopal Office;

Page 699.
His Sentence
of Suspension,

and from all Episcopal, and other Ecclesiastical Jurisdiction, during the said Suspension, upon Pain of Deprivation and Removal from his Bishoprick.

Sealed with the Seal of the Court, and Dated the 6th of September, 1686.

Some Days after, an Instrument was delivered by a Messenger, to the Dean of *St. Pauls*, requiring him, to cause the said Sentence to be affix'd to the Door of the Chapter-House; and on the Place, then call'd, the *South Door* of *St. Pauls*.

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Proceedings against the Vice-Chancellor and University of Cambridge, the 3d Jac. II. 1686.

The King's Letter to give *Alban Francis* his Degree, without insisting on the Oaths.

ON the 9th of *February* came a Letter, under his Majesty's Signet Manual, dated the 7th of the same Month, commanding the University, to admit one *Alban Francis*, a Benedictive Monk, to the Degree of Master of Arts, without administering to him any Oath whatsoever. On the Reading whereof, the Senate resolv'd to testify their common Sense of the Thing; and in a Matter of such Consequence, and so Novel, to interpose. Accordingly they agreed to send up their Sense of it to the Vice-Chancellor, by a Messenger from each House. Dr. *Smoult*, Professor of Casuistical Divinity, was made Choice of by the Non-Regents, and Mr. *Norris*, Fellow of *Trinity College*, by the Regents. The Substance of the Message was, That the House thought the Admission of Mr. *Francis*, without the usual Oaths, Illegal and Unsafe; and advised, that the King might be petition'd upon it, and that they were ready to join in the Petition, and make it their Act. And the Esquire Beadles, &c. were sent to Mr. *Francis*, to let him know, the Senate were ready to admit him, provided he would take the Oaths; but he refused, insisting on the King's Dispensation. And this was what was transacted at the first Meeting about this Matter.

The University refuse to admit him.

The

The same Afternoon the Heads met, and sent away two Letters by the Esquire Beadle; one to the Duke of *Albermarle*, their Chancellour, and another to the Earl of *Sunderland*, Secretary of State. Having waited on the Duke, the Esquire Beadle endeavoured, several times, to get access to the Lord *Sunderland*, but could not; and therefore sent in the Letter, containing great Expressions of their Loyalty, and their Readiness to petition the King, if it might be admitted. To this they reciev'd no Answer; but in a few Days came another Letter from the King, Dated *February* the 24th, being exactly the same as the former, only it was added, *That they should do it at their Peril*.

A second Letter to the University.

Page 701.

Upon this, a large Letter was prepar'd for the Duke of *Albermarle*, and another less, particular for the Lord *Sunderland*, and sent up by Mr. *Braddock*, Fellow of *Catherine-Hall*, and Mr. *Stanhope*, of *King's College*. Sunday, *March* the 13th, these Gentlemen waited on the Duke of *Albermarle*, who told them, That though the King had signified his Displeasure when he waited on him, in this Matter, before, he would make another Attempt. And on the 14th, the Duke waited on his Majesty, who commanded him to give him the Letter that he reciev'd from the University, which he did, but reciev'd no Answer. Then the Duke sent a Gentleman with Mr. *Braddock* and Mr. *Stanhope* to my Lord *Sunderland's*, who order'd them to come to him the next Morning, when he promis'd to acquaint his Majesty with their Intentions, and return them his Answer. But when they attended my Lord *Sunderland* again, he told them, the King had seen the Vice-Chancellour's Letter, and was offended with the Proceedings of the University, and would very shortly give a further Answer.

They write to the Duke of *Albermarle*, their Chancellour, to interpose in their behalf.

Sunday the 9th of *April*, Mr. *Atterbury* came down to *Cambridge*, with a Summons for the Vice-Chancellour to appear in Person, and the Senate by themselves, or their Deputies, before the Lords Commissioners for Ecclesiastical Affairs, in the Council Chamber, the 21st of *April*, to answer such Things as should be objected against them by his Majesty.

The Vice-Chancellour and Senate summon'd before the High Commission.

The

Persons deputed by the Senate to attend them.

The Persons deputed by the Senate, were these; Dr. *John Peachell*, Vice-Chancellor, Dr. *John Eaehard*, Master of *Catherine-Hall*, Dr. *Humphry Babington*, Fellow of *Trinity-College*, Dr. *Thomas Smoult*, Fellow of *St. John's College*, and Professor of Divinity, Dr. *William Cook*, Doctor of Civil Law, and Fellow of *Jesus-College*, Mr. *John Billers*, Fellow of *St. John's*, and publick Orator, Mr. *Isaac Newton*, Fellow of *Trinity-College*, and Mathematical Professor, Mr. *James Smith*, Fellow of *Queen's-College*, and Mr. *George Stanhope*, Fellow of *King's-College*.

Thursday, April the 21st, Council-Chamber; Commissioners present, Lord Chancellor *Jefferies*, Lord President *Sunderland*, Lord *Mulgrave*, Earl of *Huntington*, Lord Bishop of *Durham*, Lord Bishop of *Rocheſter*, Lord Chief Justice *Herbert*.

The Summons was Read; and then the Lord Chancellor demanded of Mr. Vice-Chancellor, Why he had not obey'd his Majesty's Commands, and admitted Mr. *Francis*?

Mr. Vice-Chancellor answer'd, it was a Matter of great Concern, and desir'd they might have Council, and Time to prepare their Answer, Whereupon Time was given them till the Wednesday following, when they were order'd to attend at Four in the Afternoon.

Wednesday, April the 27th, in the Council Chamber, the same Commissioners present as before.

Lord Chancellor. Where is your Answer?

Vice-Chancellor. Here it is. Then the Answer was Read.

The Answer of the University and Senate of Cambridge, to the Question, Why they did not admit *Alban Francis*, to the Degree of Master of Arts, &c.

They say, That by a Statute made *primo Eliz.* Every Person that shall be promoted to any Degree in either University, shall first take the Oath thereby enjoin'd; viz. The Oath of Supremacy. And that it is also Enacted by another Statute, made *quinto Eliz.* That every Person, before he is admitted to any Degree, shall take the aforesaid Oath, And

Page 702.

They desire Time to answer, which is granted.

The Answer.

And that by a Statute made the 3d Jac. I. It is Enacted, That no Person shall be admitted to any Degree, till he has taken the Oath of Allegiance; which is confirm'd by another Act made the 9th of Jac. I.

That the Vice-Chancellor, and every Member of the Senate, have taken the said Oaths: And the Vice-Chancellor and Senate, are intrusted to put them in Execution in the said University.

That the Vice-Chancellor, by his Oath of Office, hath also sworn duly to execute his Office, according to the Laws, and cannot admit to any Degree without the Senate. That upon Receipt of his Majesty's Royal Letters Mandatory, the same were, by the Vice-Chancellor, communicated to the Senate; and in order to the admitting the said *Alban Francis* to the Degree of Master of Arts, the said Oaths were offer'd to be administred to the said *Alban Francis*, but he refused them.

That the admitting him without the said Oaths, had been contrary to the abovesaid Statutes, and a breach of Trust in the Vice-Chancellor and Senate.

That whether their Lordships would take Cognizance of this Matter, they desir'd them to consider; for that the taking a Degree of Master of Arts in the University, or the admitting and refusing such a Degree, is not a Matter Ecclesiastical or Spiritual, but of Lay and Temporal Cognizance.

And further, that by an Act made the 16 Car. I. Entitled, *An Act for Repealing that Branch of the Statute of primo Eliz. concerning Commissioners for Causes Ecclesiastical.* It is Enacted, That no new Court shall be Erected or Appointed within this Realm, which should have like Power as the High Commission Court then had, or pretended to have; but that every such Commission and Grant, and all Powers and Authorities granted thereby, should be Void and of none Effect.

Lord Chancellor. Well, Have you any more to say?

Vice-Chancellor. No, my Lord, not at this Time.

Then

Then they were order'd to withdraw, and attend again on *Saturday, May the 27th*,

Saturday, May the 27th, Council Chamber, Commissioners present as before.

Their Hearing.

Page 704.

Lord Chancellor. Mr. Vice-Chancellor, last time you were here, you gave in a Paper, sign'd by your Self, and several others, coming from the University: The Lords take Notice you alledge, that your Oath hindred you from obeying the King's Mandate; pray, What is the Oath?

Vice-Chancellor. I cannot call to Mind the very Words, but the Substance of it is this, That I should well and faithfully *Prestare* or *Administrare munus* or *officium procancellarium*.

Lord Chancellor. And don't you remember any Master of Arts made without Oaths?

Dr. Cook. Not under the Quality of an University Nobleman, my Lord.

Lord Chancellor. Nay, good Doctor, you never were Vice-Chancellor yet; when you are, we will consider you.

Vice-Chancellor. I cannot say I remember any, my Lord.

Lord Chancellor. Did you never hear of one Dr. *Lightfoot*?

Dr. Cook. My Lord, He did subscribe to the 39 Articles; and the first of them is the King's Supremacy.

Lord Chancellor. And is Subscribing, Swearing, Doctor?

Mr. Stanhope. As for Dr. *Lightfoot*, we were aware of this Objection, and therefore have provided an Answer to it; and are ready to make proof of it, that he did swear.

Lord Chancellor. Nay, look you now, that young Gentleman expects to be Vice-Chancellor too: When you are, Sir, you may speak; but till then, it will become you to forbear. Mr. Vice-Chancellor, When was it you reciev'd the first of the King's Letters?

Page 705.

Vice-Chancellor. My Lord, It was upon *Ash-Wednesday*.

Lord

Lord Chancellor. When you had read the Letters, Why was not the Gentleman admitted?

Vice-Chancellor. My Lord, The Senate sent to me, to desire me, that I would forbear admitting Mr. Francis, till I had petition'd the King to revoke the Mandate.

Lord Chancellor. Did you ever know any Mandate of the King's, refus'd by the University before?

Vice-Chancellor. Yes, my Lord, in the late King's Reign, about Fourteen or Sixteen Years ago, a Mandate was given to one *Tatnel*, a Nonconformist Minister; and he refused to Subscribe, and take the Oaths: Whereupon the University petition'd the King, and he was pleased to recal his Mandate.

The King's Mandate not comply'd with, an Instance of it.

Lord Chancellor. How was it you knew the Minds of the Senate in this Business?

Vice-Chancellor. My Lord, The House sent up their Opinions, by Dr. *Smoult*, from the Non-Regent House, and Mr. *Norris*, from the Regent House.

Lord Chancellor. But, Mr. *Vice-Chancellor*, You ought to take an Account of what is done in the House, by your self, and not from others. And how came this new Way of giving Opinions? Are not the Proctors usually the Men that bring the Sense of the House to the Vice-Chancellor?

Vice-Chancellor. Not the Non-Regent, my Lord, they are not admitted into that House, or have any Thing to do there.

Lord Chancellor. Have you any Thing else to offer to my Lords?

Dr. Cook. No, My Lord.

Lord Chancellor. Then withdraw.

They withdrew, and after an Hour and half, were call'd in again, and the Lord Chancellor pronounc'd Sentence upon the Vice-Chancellor, viz.

That he should be Depriv'd of the Office of Vice-Chancellor of Cambridge, and not meddle hereafter with any Publick Business in the University. And that he should be Suspended ab Officio & Beneficio, of his Mastership of Magdalen-College, during his Majesty's Pleasure; requiring him to abstain from the Function of Master of the said College, during

Sentence of Deprivation against the Vice-Chancellor, and Suspension of his Mastership.

the said Suspension, under Pain of Deprivation from his Mastership. And they further decreed, That the Profits belonging to the said Mastership, should, during the Suspension, be apply'd to the Use of the College.

The Delegates from the Senate, attended the Commissioners again, 'on Thursday the 12th of May, with whom Dr. Peachel also appear'd.

Page 707.

The Lord Chancellor told them, That the last Time they appeared there, the Lords Commissioners had thought fit to set a Mark of their Displeasure upon the Vice Chancellor; and that all the World must be sensible how obstinate the University had shewn themselves, in refusing the King's Commands; but that their Lordships consider'd, there was a Difference between the Vice-Chancellor's Case and Their's, and therefore did not conclude them who represented the Senate, with him. But told them, their best Course would be, by a ready Obedience to his Majesty's Commands for the future, to make amends for the ill Example that had been given; and therefore he bid them, in the Words of the Scripture, *Go their way, and sin no more, lest a worse thing came unto them.* And directed them to send up Copies of the University Statutes, to be laid before the Lords Commissioners.

The Senate
are only Re-
primanded.

Order'd to
send up Co-
pies of their
Statutes.

Page 708.

Saturday, May the 14th, Mr. Atterbury the Messenger came down to Cambridge, with two Orders under the Commissioners Seal; one to the Proctors, to proceed in the Choice of a new Vice-Chancellor, and the other to Magdalen-College Fellows: To each of which, was annex'd a Copy of the Sentence, to be fix'd upon the School Doors, and Magdalen-College Gates. And on May the 17th, Dr. Balderson, Master of Emanuel-College, succeeded in the Office of Vice-Chancellor.

Balderson Ele-
cted Vice-
Chancellor.

The

The Proceedings against St. Mary Magdalen College in Oxon. 3 Jac. II. 1687.

THE Presidentship of St. *Mary Magdalen* College being void by the Death of Dr. *Henry Clerk*, the Vice-President gave Notice of it in the Chappel, on *Thursday* the 31st of *March*, 1687. And the Fellows unanimously agreed to proceed to the Election of a President, on *Wednesday* the 13th of *April* following; and a Citation was fix'd upon the Door of the Chappel signifying the same, and summoning all the absent Fellows to repair Home to the ensuing Election. After this, upon *Monday* the 11th of *April*, came his Majesty's Letter Mandatory, requiring them to Elect Mr. *Anthony Farmer*, and admit him President. Which Letter the Vice-President read in the Chappel of the said College, after Evening Service, the same Day, before the Fellows; and required the Fellows to be present the next *Wednesday* Morning, to give their Answer.

All the Fellows being met, the Vice-President read the Statute *de Electione Presidentis*, and the Statute of 5 *Eliz.* against corrupt Elections, and the King's Letter, and demanded an Answer thereto. Their Answer was, That having a Petition lying before his Majesty, they ought not to proceed to Election, till they had reciev'd his Majesty's Answer.

Friday, *April* the 15th, the Vice-President and Fellows being met, Dr. *Thomas Smith*, and Capt. *Bagshaw*, two of the Fellows, acquainted the rest, from my Lord President of the Council, that in Answer to their Petition, his Majesty having sent his Letter to the College, *He expected to be obey'd.*

Then the Vice-President demanded again, Whether they would Elect and Admit Mr. *Farmer*, in Obedience to the King's Letter? They answer'd, That they desir'd to proceed to an Election. And Mr. *Farmer*, not being a Person capable of being chosen by the Statutes, and this being the last Day on which they were confin'd to finish the Election, they

Dr. Clerk, the President of Maudlin, dies.

Page 709.

The King's Mandate for Electing Mr. Farmer.

The College petition his Majesty not to insist upon it.

They elect
Dr. Hough.

they proceeded to a Choice, having first receiv'd the Sacrament and taken an Oath as the Founder enjoins, to choole a Person qualified according to the Statutes; and they did elect Mr. *John Hough*, Batchelour in Divinity; who was accordingly pronounced President: And Mr. *Maynard* was appointed by the Thirteen Senior Fellows to present him to the Visitor, in order to his Admission: After this, Mr. *Thomson* and Mr. *Charnock* declar'd for Mr. *Farmer*, according to His Majesty's Letter Saturday April the 16th. Mr. *Hough* President Elect, was presented to the Visitor by Mr. *Maynard*, and sworn and admitted President by his Lordship.

Page 710.
Page 711.
And are Cited before the High Commission.

The Copy of the Citation to the Vice-President and Fellows, to appear before His Majesty's Commissioners for Ecclesiastical Affairs, and for the Visitation of the Universities, &c. at *White-hall*.

" Complaint having been made unto us, that the
" Vice-President and Fellows of St. *Mary Magda-*
" *len* Colledge in *Oxon*, have refused to comply
" with His Majesty's Letters mandatory, for Ele-
" cting and Admitting Mr. *Anthony Farmer* Presi-
" dent of the same Colledge, in the Room of Dr.
" *Clark* deceased: And that notwithstanding His
" Majesty's Letters, they have elected Mr. *John*
" *Hough* President of the said Colledge; you, and
" either of you are hereby required, to Cite and
" Summon the said Vice-President and Fellows,
" requiring them, or such of the said Fellows as
" they shall Depute in their behalf, to appear be-
" fore us in the Council-Chamber at *White-hall*,
" upon Monday the 6th of *June* next, to answer
" such Matters as shall be objected against them
" concerning the Premises. Dated the 28th of
" *May*, 1687.

*Directed to Thomas Atterbury and
Robert Eldous, or either of them.*

The Vice-President and Fellows, deputed by *Magdalen-Colledge*, in Answer to the Question pronounced to them by the Lords Commissioners for Ecclesiastical Affairs: *Why they did not obey His*

His Majesty's Letter, requiring them to Elect and Admit Mr. Anthony Farmer President of the said College; Answer and say, That their College is a Body Corporate, govern'd by local Statutes, granted and confirm'd to them by King *Henry* the 6th, and other his Majesty's Royal Predecessors; that by those Statutes, the Person elected President, ought to be a Man of good Life, Reputation, &c. and one who has been Fellow of the said College, or of *New-College*: And that every Fellow at his Admission swears, that he will inviolably observe all the Statutes of the said College: And that they will not procure, or consent to any Dispensation of the said Oath: That forasmuch as the said Mr. *Farmer*, had never been Fellow, either of *Magdalen* or *New-College* in *Oxford*; and had not those Qualifications which the said Statutes required. And in Regard they cou'd not comply with His Majesty's Letter, without the Violation of their Oaths, and Hazard of their legal Interest and Property, wherewith they are by their Statutes possess'd; and which, by their Oaths, they are bound to maintain: They represented the same, by their humble Petition, to His Majesty. And having deferr'd their Election of a President, to the last Day limitted by their Statutes, they proceeded to an Election, and they did elect the Reverend Mr. *John Hough*, B. D. and one of the Fellows of their College, a Person every way qualified to be President; who has since been confirmed by the Bishop of *Winton*, their Visitor, as the Statutes of the said College direct. And that they might not lie under His Majesty's Displeasure, They did on the 18th of *April*, make an humble Representation thereof to His Majesty, by his Grace the Duke of *Ormond*, Chancellor of the University of *Oxon*; setting forth their indispensable Obligations, to observe their Founders Statutes.

The Answer
of the College.

Page 712.

The Fellows Reasons why they did not Elect

Mr. *Farmer*.

That he so misbehav'd himself in *Trinity-College* in *Cambridge*, that he receiv'd Admonition from the Master of that College, in order to his

Voll. III.

C

Expulsion:

Reasons
why they did
not elect Mr.
Farmer.

Expulsion. That having left *Cambridge*, he taught School at *Chippenham* in *Wiltshire*, under a *Non-Conformist* Minister, without License.

That in *September* 1683, the said *Mr. Farmer*, was entred into *St. Mary Magdalen-Hall* in *Oxon*, where such frequent Complaints were brought against him to the Principal, for his troublesome Humour and unquiet Temper, that to preserve the Peace of the Society, he was desired to leave the said Hall.

That after his being admitted into *Magdalen College*, he declar'd that there was no Protestant but wou'd cut the King's Throat; but at other times, declared to the Fellows of the said College, that whatever he pretended, he was really a Member of the Church of *England*; and that he made Interest with some Roman-Catholicks, only to get Preferment by their Means, and for that Reason, was willing to be thought of their Religion.

That at the very time when His Majesty's Letter came to the College in his behalf, he was at *Abington*, in very ill Company, where he continued, drinking to Excess, two or three Days and Nights; and among other Disorders, was one of those who in the Night, threw the Town Stocks into the River.

Page 713.

And that in general, the said *Mr. Farmer* was of ill Fame as to his Life and Conversation, as appear'd by the Letters and Certificates, the said Fellows were ready to produce; And which were produced.

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The Commissioners declare Mr. *Hough's* Election void, and that he shou'd be amov'd.

Suspend the Vice-President, &c.

The Lords Commissioners for Ecclesiastical Affairs, nevertheless proceeded the 22d of *June*, to declare the Election of *Mr. Hough* to be void, and decreed that he shou'd be amov'd from the Presidentship of the said College.

They likewise the same Day decreed, that *Dr. Aldworth* should be suspended from being Vice-President of the said College; and *Dr. Henry Fairfax* from his Fellowship, for their Contempt, in not obeying His Majesty's Letters mandatory, for Electing and Admitting *Mr. Farmer*.

His

His Majesty also issued an Inhibition, forbidding the said College to Elect, or Admit any Person whatever, into any Fellowship or other Place, 'till his further Pleasure were known: Which was dated the 18th of July, 1687.

Aug. 14. His Majesty sent down another Mandate, authorizing and requiring the College, to Admit the Lord Bishop of *Oxford*, to the Place of President; with which Mandate, came a Letter from my Lord *Sunderland*, directing them immediately to assemble the Fellows, and communicate His Majesty's Letter mandatory to them; and to acquaint them, that His Majesty expected they shou'd pay a ready Obedience to his Pleasure herein, and that they shou'd send him an Account of their Proceedings.

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A Mandate sent to Admit the Bishop of *Oxford* President.

The Bishop of *Oxford* also sent a Letter to the College, informing them that he was indispos'd, and therefore desir'd they wou'd Admit him by Proxy.

Sept. 4. 1687. The King being at *Christ-Church* in *Oxon*, sent an Order to the Fellows of *St. Mary Magdalen* College, to attend him at *Christ-Church* at Three in the Afternoon; And they attended accordingly.

The King goes down to *Oxford*, and threatens the College for their Contempt.

King. What's your Name, are you Dr. *Pudsey*?

Dr. *Pudsey*. Yes, may it please your Majesty.

King. Did you receive my Letter?

Dr. *Pudsey*. Yes Sir, we did.

King. Then you have not dealt with me like Gentlemen, you have done very uncivilly by me, and undutifully ——— Here they all kneel'd, and Dr. *Pudsey* offer'd a Petition, which His Majesty refus'd to receive, and said, Ye have been a stubborn turbulent College, I have known you to be so these Twenty-Six Years. You have affronted me in this. Is this your Church of *England* Loyalty? One wou'd wonder to find so many Church of *England* Men in such a Business. Go home, and shew your selves good Members of the Church of *England*. Get you gone, know I am your King, I will be obey'd; and I command you to be gone, go and Admit the Bishop of *Oxford* Head Principal, I mean President of the College. Let

Commands them to Elect the Bishop of *Oxford*:

them that refuse it look to it, they shall feel the Weight of their Sovereign's Displeasure. As they were going, the King said he heard they had Admitted a Fellow since his Inhibition; to which they answer'd, it was only a Confirmation of a former Election: The King said that was downright Disobedience

The Fellows offer'd again their Petition on their Knees.

King. Get you gone, I will receive nothing from you 'till you have obey'd me, and Admitted the Bishop of *Oxon*.

They refuse to comply.

Upon which they went to their Chappel, and Dr. *Pudsey* proposing whether they wou'd obey the King, and Elect the Bishop of *Oxon*, they agreed that the Electing the Bishop of *Oxford*, being directly contrary to the Statutes and their Oaths, they cou'd not apprehend it in their Power to obey His Majesty in this Matter.

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Page 717.

Page 718.

A Deputation from the H. Commission comes down to the College to visit them.

Octob. 19. Mr. *Atterbury*, the King's Messenger, fix'd a Citation on the College and Chappel Doors, requiring the pretended President and Fellows, and other Members of the College to appear before the Lords Commissioners, the Lord Bishop of *Chester*, the Lord Chief Justice *Wright*, and Mr. *Baron Jenner* in the Chappel, on *Friday* Morning, *Octob.* the 21st.

On *Thursday* the Lords Commissioners came to *Oxon*, attended with Three Troops of Horse which were quarter'd there.

On *Friday* Morning at Nine, they came into the outward Chappel, but no Seats being prepared there, they adjourn'd into the Hall, where their Commission was read, which in general was the same with the former, only these Three who came down, had been added to the other Lords, and were particularly impowered to visit *Magdalen* College only.

Page 719.

Bishop of *Chester's* Speech.

Then the President and Fellows were call'd over, and all appear'd who were in Town, except Dr. *Fairfax*, and Excuses were made for the Absent. After which the Lord Bishop of *Chester* made a Speech, wherein he was very severe against Disloyalty and Disobedience; and urg'd that the Church

Church of *England* taught an unlimited, unconditional Obedience: And he endeavour'd sometimes by Threats, and sometimes by Promises to induce them to comply.

After the Speech was ended, the Court adjourned 'till the Afternoon. In the Afternoon the President desired a Copy of the Commission, and Time to consider of it: But a Copy was denied.

Bishop of *Chester*. Dr. *Hough*, will you submit to this Visitation. Their Hearing.

President. I do declare here, in the Name of myself, and the greater Part of the Fellows, that We submit to the Visitation, as far as it is consistent with the Laws of the Land and the Statutes of the College.

L. C. J. You cannot imagine that we act contrary to the Laws of the Land, and as to the Statutes, the King has dispensed with them.

President. My Lords, I find that your Commission gives you Authority to change and alter the Statutes, and make New Ones as you think fit. Now we have taken an Oath, not only to observe these Statutes, but to admit of no New ones or Alterations in these: This must be my Behaviour here, I must admit of no Alteration, and by the Grace of God, never will.

Bishop of *Chester*. You have a Statute there for Mass, why don't you read Mass?

President. That Statute is taken away by the Laws of the Land, which oblige us to say *Common-Prayer*.

Bishop of *Chester*. Do you allow that an Act of Parliament can free you from the Obligation of a Statute.

President. I do not say but that His Majesty may alter our Statutes, or the Parliament may do it; but I who have already taken an Oath to observe these Statutes, as they now stand; and to admit of no Alteration by any Authority whatever, can obey no other: but those, who shall come after such Alterations shall be made, are not oblig'd to observe them; and that is our Case, as to the Statutes for Mass.

The Decree
for making
Dr. Hough's E-
lection Void,
was read.

Page 720.

Then the Decree of the 22d of *June*, declaring the President's Election being void, was read.

Bishop of *Chester*. Why did you not obey this Decree.

President. I was never Cited before their Lordships, or heard in Person or by Proxy, and I am the first Instance of any Man that was ever depriv'd of a Free-Hold, (whereof he had been legally invested, and was possess'd) without being summon'd or heard.

Bp. of *Chester*. The King has for the most part, recommended to the Presidentship of this College.

President. I am the Twentieth President, and only Four of that Number have been recommended by the Crown; whereof Three were qualified for that Office.

Then a Petition, from the *Society* to His Majesty, dated the 9th of *April* was read, wherein 'twas set forth, that having heard that His Majesty wou'd recommend Mr. *Farmer* to them, a Person incapable, they did humbly beseech him, either to leave them to a free Election, or to recommend a qualified Person.

Bishop of *Chester*. Why did you not stay for His Majesty's Answer.

President. We did, 'till the very last Day, wherein we are limited to finish the Election; and my Lord *Sunderland*, returned in the King's Name this Answer, *That His Majesty expected to be obeyed*. Now my Lord, we did no longer defer the Election, because our Statutes enjoin us to Elect within such a Time; and we could not choose the Person His Majesty recommended because he was unfit, as has appeared. The *Society* therefore proceeded to the Election of another Person.

Saturday, Octob. 22d, 1687, in the Common Room.

The *Society* were ordered to withdraw, and a little time after, the President was call'd in alone.

Bishop of *Chester*. Do you submit to the Decree of the Commissioners, whereby the Election is declared Null.

President.

President. I cannot submit to that Sentence, because I think I cannot be depriv'd of my Free-Hold, but by Course of Law in *Wistminster-hall*, or by being some way incapacitated by the Founder's Statutes.

The President refuses to submit to the Decree which Voids his Election,

Bishop of Chester. Will you deliver up the Keys to the President whom His Majesty hath appointed.

President. There neither is nor can be a President, so long as I live and obey the Statutes of the College, and therefore I do not think fit to give up my Right, the Keys and Lodgings.

Page 721.

Then he was ordered to withdraw, and after a little time, the President and Fellows were called in again.

Bishop of Chester. Will you deliver up the Keys, and quit Possession of the Lodgings?

President. I have not heard any thing to induce me to it.

Then the King's Proctor accused him of Contumacy, and the Bishop of *Chester* admonished him in these Words.

He is accused of Contumacy

Bishop of Chester. Dr. *Hough*, I admonish you to depart peaceably out of the Lodgings, and to act no longer as President, or pretended President of this College.

Which being done, they struck his Name out of the Book, and admonished the Fellows and others of the *Society*, not to submit to his Authority.

Afterwards Dr. *Fairfax* was called in alone; and the Doctor desired some others might be present, but was told he must not prescribe to the Court.

Dr. *Fairfax* examined,

Bishop of Chester. What's the Cause of your Contempt, in not appearing Yesterday.

Dr. *Fairfax.* I thought my Suspension above had eased me of that Trouble.

Then he tendred a Copy of his Suspension, which was read; and observ'd that the Reason that Suspension was grounded upon, was for not Electing Mr. *Farmer*, which he looked upon as a Hardship; they having made good their Articles against Mr. *Farmer*.

L. C. J. You must make your Supplication and Submission to the King.

Page 722.

Dr. *Fairfax*. My Lord, they tell me that this Business lies in your Lordship's Court, and only there.

Bishop of *Chester*. But will you submit to this Visitation.

Then Dr. *Fairfax* read a Paper, dated the 22d of *October*, in these Words, " My Lords, I have
" been summoned and appear'd in this Cause be-
" fore the Lords Ecclesiastical at *White-hall*, with
" whom your Lordships are now joined in Com-
" mission; and then gave in my Answer: I have
" nothing to add to it, and find no Reason to re-
" tract it.

Dr. *Fairfax*
and the Fel-
lows, refuse to
submit to the
Bishop of *Ox-*
ford.

Bishop of *Chester*. If your Suspension was off, would you submit to the Bishop of *Oxford*?

Dr. *Fairfax*. Truly my Lord, I cannot do it. Then all the Fellows were call'd in, and it was demanded, whether they would assist at the Admission of the Bishop of *Oxford* to be install'd President, by Virtue of the King's Mandate: To which they answered, they were under Oaths to the contrary, and therefore could not do it (except Dr. *Pudsey* and Dr. *Smith*, who answer'd doubtfully, and *Charnock*, that he would assist) Then they were ordered to withdraw, and Dr. *Pudsey* was call'd in alone, from whom they learnt the Manner of Installing a President; and then the Court adjourned 'till the Afternoon.

The Lords Commissioners being met, a Letter from Dr. *Pudsey* to the Earl of *Sunderland* was read, dated *August* the 21, signifying, that the Society in Answer to His Majesty's Letter commanding them to Admit the Bishop of *Oxford*, agreed unanimously in this Answer, that the Place was full: Their Lordships therefore, demanded of the Fellows singly if that was their Answer: And as many as was present acknowledged, that it was.

The President
Protests a-
gainst their
Proceedings.

During this Examination the President came in- to Court, and made a Protest against all their Pro- ceedings in Relation to his Deprivation, and de- clared that they were Illegal, Unjust and Null; and therefore he appealed to the King in his Courts of Justice: At which, the Strangers and young Shollars gave a *Humm*; whereupon their Lord- ships

ships were so incensed, that they bound over the President in the Sum of 1000 l. to appear at the *King's Bench Bar*, the 12th of November. He is bound over.

After this was read the Answer of the Fellows to His Majesty, upon his Command to them upon the 4th of to September, to Elect the Bishop of Oxford: The Answer was subscribed by all the Fellows then present, except Mr. Charnock; and the Bishop of Chester charged the Fellows with Unmannerliness, in sending such an Answer.

Tuesday the 25th of Octob. the Court being met, Mr. Wiggins, Chaplain to the Bishop of Oxford, delivered in a Paper, Impowering him as Proxy to be Install'd President for his Lord: Which being read, together with the King's Mandate for the Bishop of Oxon, the Question was put to two or three of the Seniors, whether they would assist at this Installment, which they refusing, the Court adjourned to the Chappel, where the Bishop of Chester put Mr. Wiggins into the President's Stall, and he took the Oath which the Statutes enjoin the President at his Admission, and the Oaths of Allegiance and Supremacy; and then their Lordships Conducted him to the Door of the President's Lodgings, where knocking Three times and not being opened, Mr. Atterbury and a Tipstaff were ordered to fetch a Smith and force it open, which was done; their Lordships being present; But none were assisting except Mr. Charnock.

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The Fellows refuse to Install the Bishop of Oxford. The Bishop of Chester Installs him by Proxy.

And breaks open the President's Lodgings.

It being demanded of Dr. Fairfax, if he would submit to the New President, he said he could not, because he had a Legal President already: Then the same Question was put to the Society, who in the Afternoon returned this Answer: "That whereas His Majesty had been pleased by his Royal Authority, to cause the Right Reverend, the Lord Bishop of Oxford to be Installed President; They, whose Names where thereunto subscribed, did submit to it, as far as was lawful and agreeable to the Statutes of the College.

It being again demanded of Dr. Fairfax, if he would obey the Court and the Bishop of Oxon; and he refusing both, the Lords Commissioners ordered his Name to be struck out of the Buttery Book;

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Book ; and declared his Place to be Void : Which the Doctor Protested against as Illegal and Unjust.

Then the Commissioners adjourned 'till *Wednesday* Morning, requiring the *Society* to bring in their Answers to the following Questions. *1st*, What Gifts and Provisions have you for Entertainment of Strangers? *2d*, What is the Value of them. *3d*, How Applied? And *4th*, Where is the Place of Entertainment?

Wednesday, Octob. the 26th, 1687.

It was made appear to the Commissioners, that the *Society* was obliged to give in Charity 2 *l.* 3 *s.* 4 *d.* And that they gave, besides *Comunib. Annis*, almost 100 *l.* Upon which, their Lordships commended their Liberality, and said that Complaint was groundless.

Friday, Octob. the 28th.

The Fellows were called in, and the Bishop of *Chester* told them; His Majesty expected some farther Submission: And that they should own the Proceedings and Legality of the Court; and implore His Majesty's Pardon: Whereupon they withdrew, and gave in the following Answer.

Page 725.

May it please your Lordships. " We have endeavored in all our Actions to express our Duty in
" all Humility to His Majesty, and being Con-
" scious to our selves, that in the whole Conduct
" of the Business before your Lordships, we have
" done nothing but what our Oaths and Statutes
" indispenfably oblige us to: We cannot make
" any Declaration whereby we acknowledge we
" have done any thing amiss, having acted accord-
" ing to the Principles of Loyalty and Obedience
" so far as we could, without doing Violence to
" our Consciences, or Prejudice to our Rights;
" (One of which we conceive the Electing a Presi-
" dent to be) from which we are sworn upon no
" Account whatsoever to depart. We therefore
" humbly beg your Lordships to represent this fa-
" vourably, with our utmost Duty to His Majesty;
" whom God Grant long and happily to Reign.

Upon their Lordships perusing the Answer, they expressed their Dislike and said, it did not come up to what they had delivered on *Tuesday*.

To

To which Dr. Bayly said, by the Word *Submit* in their Answer on *Tuesday*, they did not intend any future Obedience to the Bishop of *Oxford*, but meant it in Reference to the King's Authority; inasmuch as they did not oppose the Bishop of *Oxford's* Installment. Upon this a fresh Question was put to the Fellows: Whether they would obey the Bishop of *Oxford* as their President, *licitis & honestis*; to which all except One or Two answered, they could not obey the Bishop of *Oxford* as their President: And Mr. *Fulhan* in particular being asked the Question said, that Dr. *Hough* being duly Elected and Admitted President had obtained such a Right, that he cou'd obey no other Person as President.

Whereupon Mr. *George Fulhan* was suspended from the Profits of his Fellowship, during the King's Pleasure; and the Court adjourned 'till *Wednesday, Novemb. the 16th*, when Mr. *Joyner* and Mr. *Allybone* were entred Fellows, in the Room of Dr. *Fairfax* and Mr. *Ludford* deceased: All Oaths being dispensed with, besides that of a Fellow.

Then the Bishop of *Chester* made a Speech, inveighing against the College, as a Society abounding in mutinous and factious Spirits; and told them they had been long exercised in the Methods of Quarrelling, sometimes among themselves, sometimes with their Visitor, and now they were advanced to that Pitch of Insolence to quarrel with their Prince; and affront his Sacred Majesty: Then he went on, and shewed what Proceedings had been against the College; and threatened them if they still persisted to oppose the Royal Power, the Commissioners were resolved to Vindicate the Right and Honour of His Majesty: And had drawn a Form of *Submission*, which they expected the Fellows should immediately Sign.

Bishop of *chester's* Second Speech.

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Then a Form of *Submission* was tendered them, which all, except Dr. *Thomas Smith* and Mr. *Charnock*, refused to subscribe: And they were all ordered to withdraw.

The Fellows refuse to submit to the Bishop of *Oxford* as President.

After a short Time, Dr. *Aldworth*, the Vice-President, and all who refused to Sign the Paper promi-

And are expelled the College.

promising Submission to the Bishop of Oxon were call'd in, and by Sentence of their Lordships Expelled the College for their Contempt: Whereupon the Persons Expeiled spoke to this Effect.

Their Protest

Page 728.

" My Lords, we profess all Duty to the King, and
 " Respect to your Lordships; but must beg Leave
 " to declare, that we think our selves injur'd in
 " your Lordships Proceedings, and therefore pro-
 " test against them; and shall use all Just and Le-
 " gal Ways of being Relieved.

A short Time after, an Instrument was fixed on the College Gates in these Words. *By His Majesty's Commissioners, &c. Impowered to Visit St. Mary Magdalen College in Oxon.*

Sentence of Expulsion.

" Whereas in our Visitation of the said College,
 " it appeareth unto us that Dr. Charles Aldworth,
 " Dr. Alexander Pudsey, Dr. John Smith, Dr. Tho.
 " Bailey, Dr. Thomas Stafford, Master Robert
 " Almond, Mr. Manwaring Hammond, Mr. John
 " Rogers, Mr. Richard Strickland, Mr. Henry
 " Dobson, Mr. James Bailey, Mr. John Davies,
 " Mr. Francis Bagshaw, Mr. James Fayrer, Mr.
 " Joseph Harwar, Mr. Thomas Bateman, Mr.
 " George Hunt, Mr. William Cradock, Mr. John
 " Gillman, Mr. George Fulham, Mr. Charles Penny-
 " ston, Mr. Robert Hyde, Mr. John Yerbury,
 " Mr. Robert Holden and Mr. Stephen Wilks, Fel-
 " lows of the same College; have been severally
 " Guilty of Disobedience to His Majesty's Com-
 " mands, and obstinately contemned his Royal
 " Authority; and do still persist in the same: We
 " have thought fit upon mature Consideration
 " thereof to Declare, Pronounce and Decree; that
 " the said Charles Aldworth, &c. and every of
 " them be Deprived and Expelled from their Re-
 " spective Fellowships. Dated the 16th of No-
 " vember, 1687.

White-hall, Decemb. 10.

A Decree
 Whereby the
 Fellows are in-
 capacitated
 for any Pre-
 ferment.

" His Majesty's Commissioners for Causes Eccle-
 " siastical, and for Visiting all Cathedral and
 " Collegiate Churches and Colleges, &c. met this
 " Day; and taking into their Consideration all
 " that had passed in the Business of St. Mary Magda-

" len

“ *len* College in *Oxford*, and the Contemptuous and
 “ and Disobedient Behaviour of Dr. *John Hough*,
 “ several of the Fellows of that College, through-
 “ out the whole Proceeding: Their Lordships De-
 “ clared, Decreed and Pronounced that Dr. *Hough*,
 “ Dr. *Charles Aldworth*, Dr. *Henry Fairfax*, Dr.
 “ *Alexander Pudsey*, Dr. *John Smith*, Dr. *Tho.*
 “ *Bailey*, Dr. *Thomas Stafford*, Mr. *Robert Al-*
 “ *mond*, Mr. *Manwaring*, Mr. *Hamond*, Mr. *John*
 “ *Rogers*, Mr. *Richard Strickland*, Mr. *Henry*
 “ *Dobson*, Mr. *James Bailey*, Mr. *John Davies*,
 “ Mr. *Francis Bagshaw*, Mr. *James Fayrer*, Mr.
 “ *Joseph Harwar*, Mr. *Tho. Bateman*, Mr. *George*
 “ *Hunt*, Mr. *William Cradock*, Mr. *John Gillman*,
 “ Mr. *George Fulham*, Mr. *Charles Pennyston*,
 “ Mr. *Robert Hyde*, Mr. *Edward Yerbury*, Mr.
 “ *Henry Holden*, and Mr. *Stephen Wilks* should be
 “ incapable of receiving or being admitted to any
 “ Ecclesiastical Dignity, Benefice or Promotion:
 “ And such of them who are not yet in Holy Or-
 “ ders, were adjudged incapable of receiving or be-
 “ ing admitted into the same: And all Arch-Bi-
 “ shops, Bishops, and other Ecclesiastical Officers
 “ and Ministers, were required to take Notice of
 “ the said Sentence, and yield Obedience thereto.

The 17th of *January*, 1687, being the Day that
 the Thirty Demies of *Magdalen* College were, by
 Summons from the Bishop of *Oxon* their New Pre-
 sident, commanded to appear before him, and none
 appearing, Mr. *Charnock* the New Vice-President,
 struck out of the *Buttery* Book the Names of
 Mr. ——— Mr. *Holt*, Mr. *Adams*, Sen. Mr. *Vesey*,
 and Mr. *Brabourn*, Masters of Art, Mr. *Hyde*,
 Mr. *Woodward*, Mr. *Watkins*, Mr. *Stacey*, Mr.
Sherwin, and Mr. *Kenton*, Batchelors of Art, and
 Mr. *Cross*, Mr. *Bush*, and Mr. *Wells*, Under-Gra-
 duates.

The

*The Tryal of PHILIP STANSFIELD,
Son of Sir JAMES STANSFIELD of
New Milns; as well for High Treason, as
the Murder of his Father, before the Earl
of Linlithgow, Lord Justice General;
and the other Lords Commissioners at
Edinburgh, 6 Feb. 4 Jac. II. 1688.*

N. B. *The Scotch begin their Year in January :
So that this Tryal happened the February before
the Abdication ; and therefore comes in before
the Tryal of the Seven Bishops.*

The Indict-
ment was for
H. Treason,
Curfing his
Father, and
being access-
ry to his Mur-
der.

Page 822.

Drinking
Confusion to
the King,
Treason.

“ THE Indictment sets forth, That whereas
“ by the Laws of this Kingdom, the speak-
“ ing of Malicious and Seditious Words, to the
“ Disdain of His Majesty’s Person and Contempt
“ of his Royal Government : Such as drinking or
“ wishing Confusion to His Majesty, is High Trea-
“ son. And the Curfing, Beating, Invading or
“ Assassinating of a Parent, is punishable with
“ Death, &c. And that Murder under Trust, is
“ punishable as Treason. *Nevertheless, The said*
“ *Philip Stansfield* shaking off the Fear of God, &c.
“ Did upon the 1st, 2^d or 3^d, or one or other of
“ the Days of the Months of *June, July, August* or
“ *September* last, in the Kitchen of *New-Milns*, as
“ a most Villainous and avowed Traytor, begin a
“ Health to the Confusion of His Majesty his Na-
“ tive Sovereign ; and did cause others, in his
“ Company, to drink the same.
“ That altho’ his Father had given him a liberal
“ Education, he had taken Ill Courses, and been
“ detained Prisoner in the *Marshalsea* in *Southwark*,
“ and in the publick Prisons of *Antwerp, Orleans*
“ and other Places ; from whence his said Father
“ had released him : And that notwithstanding, he
“ fell to his Debauched and Villainous Courses
“ again. Whereupon, his Father Signifying his
“ Intentions to disinherit him, and settle his
“ Estate upon *John Stansfield* his Second Son :
“ The

“ The said *Phillip Standsfield* did declare he would
 “ Cut his Father’s Throat : Particularly, That up-
 “ on the 1st, 2^d or 3^d; or one or other of the Days
 “ of the Months of *January, February, March,*
 “ and Remanant Months of the Year 1687; at
 “ *Milns* aforesaid. And upon the 1st, 2^d or 3^d;
 “ or one or other of the Days of the Months of
 “ *January, February, March,* and Remanant
 “ Months of the Year of God 1683, 1684, and
 “ 1685. At *Brussels, Breda,* and other Places in
 “ *Holland and Flanders*; and in Prisons where he
 “ was detained in *London and Southwark*: He did
 “ most Wickedly and Unnaturally Rail upon, A-
 “ buse, and Curse the said *Sir James Stansfield* his
 “ Parent; praying the Devil might take him, the
 “ Devil Rive him; and that if he had a Sword he
 “ would Run it through him: And if ever he came
 “ to *Scotland*, he would be avenged upon him, &c.
 “ And that his Mother Recovering out of a Swoon
 “ and saying, *Philip* you will shortly want your
 “ Mother; which will be a gentle Visitation to
 “ *Sir James* your Father: He answered, By my
 “ Soul my Father shall be Dead before you Mother.
 “ That upon the 1st, 2^d or 3^d; or one or other
 “ of the Days of the Months of *January, February,*
 “ *March,* and Remanant Months of the Year of
 “ God 1680, 81, 82, 83, and 1684 Years, or one
 “ or other of them; He did attempt to Assassinate
 “ his Father, by pursuing him in the High-way,
 “ &c. and firing Pistols upon him: Which the
 “ said *Sir James* his Father had declared to seve-
 “ ral Persons of Honour in his Life-time.
 “ And that upon the ——— Day of *November*
 “ last, the said *Sir James Stansfield*, coming from
 “ *Edinburgh* to his House at *New-Milns*, and go-
 “ ing into his Chamber to rest about Ten a Clock
 “ at Night, and being alone in the Room, under
 “ the Credit, Trust and Assurance of the said
 “ *Philip* his Son; and his own Servants within
 “ his Family: The said *Philip* did consult with
 “ one *George Tomson* and divers other Persons how
 “ to murder him: And that accordingly, they
 “ did murder and strangle him in his Bed-Cham-
 “ ber; and in the Dead of the Night carried him
 “ from

Curfing a Fa-
 ther, is puni-
 shed with
 Death in Scot-
 land.

Page 823.

The murder-
 ing any one
 under ones
 Protection, is
 punish’d as
 Treason.

“ from the said Room, and threw him into a Wa-
 “ ter near the House. That the next Morning
 “ when the Body was found, the said *Philip* cau-
 “ sed it to be buried in hast, and refused to stay
 “ ’till his Friends and Physitians view’d it. That
 “ the Body being taken up again by Authority,
 “ and inspected by Surgeons, it appeared to have
 “ been strangled and not drown’d. And that his
 “ nearest Relations being required to lift the Corps
 “ into the Coffin after it had been inspected; up-
 “ on the said *Philip Standsfield* touching of it (ac-
 “ cording to God’s usual Method of discovering
 “ Murder, *says the Framer of the Indictment*) it
 “ bled afresh upon the said *Philip*, and that there-
 “ upon he let the Body fall, and fled from it in
 “ the greatest Consternation; crying *Lord have*
 “ *Mercy upon me.*

Crimes of a
 different Na-
 ture may be
 laid in one In-
 dictment.

“ And that the said *Philip* being found by an
 “ Assize to be Actor, Art and Part of the aforesaid
 “ Crimes, or one other of them: He ought to
 “ be punished, *for the Treasonable Crimes above*
 “ *specified*, with Forfaulture of Life, Lands and
 “ Goods: *And for the other Crimes above menti-*
 “ *oned* Capitally, and with the Pains of Death and
 “ Confiscation of Moveables; to the Terror and
 “ Examples of others, &c.

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 The Prisoner’s
 Council pro-
 duce their
 Warrant to
 appear for
 him.

They begin
 his Defence.

The Pannels, Procurators, *i. e.* The Prisoners
 Council, produced two Warrants of Privy-Coun-
 cil, commanding them to comper and plead the
 Pannels Defence.

Sir *Patrick Hume* alleg’d in the Prisoner’s De-
 fence, that as to the drinking Confusion to the King
 it was an improbable Calumny, he having upon
 all Occasions testified his Loyalty; particularly in
Monmouth’s Rebellion, when he enter’d himself a
 Voluntier in the Earl of *Dunbarton’s* Regiment;
 where he continued ’till the Rebels were defeated.

He denies that the Prisoner had been guilty of
 any notorious Crimes abroad as had been suggest-
 ed, or was imprisoned on such an Account.

That he could not conceive any Displeasure a-
 gainst his Father for settling his Estate on his Se-
 cond Son, because he knew not of it ’till after his
 Death.

That

That as to the pretended Curses and Imprecations he is said to have used against his Father; such of them as were laid to be done out of *Scotland*, he could not be punished for by the Laws of *Scotland*.

As to those laid to be before *March* 1685, they were pardoned by the Act of Indemnity.

That as to any pretended Railing or Cursing since that time, they being Injuries alledg'd to be done to the Father, they ought to be taken to be remitted by him; insomuch as he did not prosecute him for them in his Life-time: And if the Prisoner was guilty of them it appear'd, his Father either dissembled his Knowledge of them or had pass'd them by; because by a Letter dated in *June* last, he entrusted him with the Receipt of his Rents and the Management of his Affairs; and subscrib'd himself his loving Father: So that all former Differences (if any were) betwixt them, were accommodated.

That as to the Statute in Relation to Murder under Trust, which is declared to be punishable as Treason: The Father could not be said to be under Trust or Assurance of the Son, as a Traveller was under the Protection of his Host in an Inn. And that in the Case of Mr. *James Oliphant* in the Year 1665, The Lord of Session found, that a Son's killing his Mother, was not Murder under Trust, and so not punishable by that Statute as Treason.

That the Circumstances from whence it was inforc'd he was the Occasion of his Father's Death, were very remote and uncertain; particularly that of his having threatned his Father's Death.

As to his firing Pistols at his Father in 1683 and 1684, it might be prov'd there was an entire Friendship between him and his Father at that Time: But if those Facts were true, as they had been pardoned by the Act of Indemnity, so they could not be made use of as Instruments now, to infer him guilty of this Murder.

That as to the Corps bleeding when the Prisoner touch'd it, it was a superstitious Observation, founded neither upon Law or Reason: And quotes *Corpus ovius* & *Mattheus de Criminibus* to be of the

same Opinion: And says, the Bleeding was occasioned by the moving of the Body, and the Incision the Surgeons had made; and that other People touching the Body at the same Time, it could no more be ascribed to the Prisoner than to them.

That the other Circumstances laid in the Indictment were but idle Stories, for that it could be prov'd the Prisoner went to Bed in his own Chamber that Night his Father was murdered, and did not stir out of his Bed 'till call'd up by his Father's Servant next Morning.

That in Capital Crimes, where the Accusation is founded as in this, upon remote and uncertain Conjectures; the Person accused may not be found guilty on Presumptions.

Lastly, That those Presumptions were over-balanced by Presumptions on the other Side: And that it was rather to be presum'd, the Father threw himself into the Water, because it was notoriously known, that he was subject to Melancholly, and had before attempted to throw himself out of a Window; and was observed to be more than ordinarily melancholly the last Time he went home from *Edinburgh*. Or if he was murdered, it could not be presum'd the Prisoner should break through all the Restraints and Ties of Nature, when it might be prov'd there was an entire Friendship between them. And further, after it was surmised that his Father was murdered, if he had been Conscious to himself of being concerned in it he would certainly have fled; but on the contrary, on the first Rumour of it, he immediately went to *Edinburgh*; and being told several Days after that he was suspected to have a hand in it, he surrendered himself to Prison, that he might undergo the strictest and severest Tryal; which alone was sufficient to take off the Presumptions urged against him, and convince the World of the Prisoner's Innocence.

His Majesty's
Advocate re-
plies.

His Majesty's *Advocate* reply'd, That the drinking or wishing Confusion to His Majesty (which Fact was not expressly controverted) did clearly infer Treason, and came within the Intention of the Act. All Speeches in Disdain and Contempt
of

of his Majesty (as this was) being by that Act made so. And altho' the Prisoner having engag'd voluntarily in His Majesty's Service; it was urged that these Words could not be spoken deliberately and maliciously, yet they being prov'd to be reiterated, and the Prisoner forcing others to drink the same Health; the Crime once committed could not be wiped off by any Speeches or Actions afterwards, and that the Prisoner had a due Sense of the Importance of the Words, having conjur'd the Company to Secresy; and threatned to Beat and Brain them that should discover what they had done.

And whereas it is said that Crimes comitted out of the Kingdom are not cognizable here, it is answered; that Crimes committed against the Nature or the Law of Nations, as Treason and Cursing of Parents are triable by the Courts of Justice here wherever they are committed: But they having produc'd no Proof (*Viva Voce*) of what was done abroad, His Majesty's *Advocate* did not insist upon them as distinct Crimes, but as Evidences of the Prisoner's habitual Debauchery, and unnatural Malice against his Father, for a Tract of so many Years.

Whereas it is said all Crimes before the Year 1685, are pardoned by the Indemnity, It is answered, The Crime of Cursing of Parents was not included in a general Act of Indemnity; for the Words of the Act against Curfers of Parents being, *That the Curfers of Parents shall be put to Death without Mercy.* There required a special Remission in the Act of Indemnity, especially where private Persons are more interested than the Publick, as here the Parent is: And also for that the Indemnity extended only to those who were under the Degree of an *Heretor, Wodsetter, or Burgefs*, which the Prisoner could not pretend to be.

And as the Crime is said to be remitted by the Father because he seem'd to be reconciled, It is answer'd, that in Crimes atrocious and where the Publick is concern'd, even an expresse Discharge or Release from the injured Party, could not dispense with the Punishment: And that a Father ordering

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his Son to call in for Chamberlain Accounts, without empowering him to discharge the same, was no Evidence of Confidence in his Son, much less remitting of his Crime.

Altho' it is said, The Son threatning to cut his Father's Throat was but a remote Circumstance, and that it could not be concluded from thence that he had actually murdered him; yet he thought it such a Circumstance, that unless the Prisoner could shew that some other Person kill'd him, he must be reputed the Murderer.

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Here the King's *Advocate* opened the Evidence, and then went on. That as to the Body bleeding, altho' several Persons touch'd it, none of their Hands were besmeared with Blood but the Prisoner's; and that the Body having lain Two Days in the Grave in a cold Season, the Blood must naturally be congeal'd. That the lifting about the Body, and even the Incision that was made, causing no such Effusion before but only of some Water or Gore, and should upon the Prisoner's first touching it fall a bleeding afresh; he must ascribe it to the wonderful Providence of God who in this manner discovers Murder; especially since no natural Reason could be assign'd for it: And that the horrible Impressions it made on the Prisoner, notwithstanding his Resolution to the contrary, might be urg'd as another Argument of his Guilt.

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Altho' it was alleged that Capital Punishment cannot be infer'd from Conjectures, but from clear and positive Testimonies: He affirmed that a Complication and Conjunction of so many Circumstances, tho' none of them *per se* was sufficient, yet being all of them join'd, induced a greater Certainty than Two positive Witnesses of the Fact, for they might be impos'd upon; but where the Proof arises from the Nature of the Thing it is sure, because it is always the same and admits of no Variation.

And whereas it was urg'd that the Prisoner could not be presum'd to be guilty of a Thing so unnatural, it was answer'd, The Fact being so strongly evinc'd, this did but conclude the greater Guilt.

And

And that altho' Sir *James Standsfeld* was melancholly and frantick in the Year 1679, Yet, he was known to have recovered his Health, and to be of a compos'd, sedate Temper of Mind for several Years past, and so capable of Business as to be entrusted by the wisest Men in the Kingdom; nor at the Time of his Death had any Sickness or returning Frenzy upon him: Besides, it appearing plainly that he was strangled, it could not be presumed that he afterwards walk'd out and drowned himself. And as to the Prisoner's surrendring himself, it was indeed suitable to the rest of his Impudence, and he might imagine by that means to make the World believe he was innocent.

To this Reply of His Majesty's *Advocate*, Sir *David Thoers*, Council for the Prisoner, rejoins.

The Prisoner's
Council re-
join.

That as to the treasonable Expressions abovesaid, besides the Answers that had been already given; it appear'd, the Plaintiff was surpriz'd into those rash Expressions by his conjuring the Persons present to Secrecy, and that such unadvis'd Expressions were never to be laid hold on, so as to infer a Capital Punishment, where the Party accused thereof was not otherwise suspected of Disloyalty.

As to the Crimes committed abroad, since His Majesty's *Advocate* did not insist upon them, there required no further Answer: Otherwise, it would be strange that one and the same Crime should be subject to the Punishment of several Jurisdictions, where the Punishment of the said Crimes are different. And, since my Lord *Advocate* had no Proof of those pretended Crimes but by Certificates and Affidavits, they could not be insisted on because they were not inserted in the Libel, or given out to the Prisoner; and all Crimes were to be prov'd *Testibus, non Testimoniis*: And if the Custom of Affidavits were once admitted, the Prisoner wou'd be depriv'd of the Advantage of cross examining or objecting to the Credit of the Witness.

That he must still insist upon the Act of Indemnity, for by it all Murders, Robberies, and Slaughters, are expressly pardoned; and all other Crimes committed against His Majesty and the Laws of the Kingdom: And that a Pardon is to be taken in the most ample and beneficial Sense for the Subject, and not to be restrained.

Page 830.

That the Prisoner having no visible Fortune at that Time, his Quality did not come within the Exception of that Act; and to the other part of the Reply, they insisted as before, That all pretence of private Injury was taken away by the offended Party's dissembling the Wrong done him, or at least by his Death: And that here the Father being reconciled, and remitting the Injury, the Publick ought not to take Notice of it; the Act being intended in favour of Parents, and never executed but at their instance. As to the alleg'd habitual Cursing and Swearing it was deny'd; however, the Act of Indemnity had pardoned it: And besides, the particular Acts ought to have been laid in the Indictment.

As to the Circumstances urged by my Lord Advocate, from whence he would infer the Prisoner guilty, they were but falacious and not at all conclusive.

As to the Minister's hearing a Whispering and Noise, whereby he was terrified: His Terrour had put him in such Confusion, as probably render'd him incapable of observing or judging of what happened. That as to the Body's floating, it might be occasion'd by a great Coat of thick Cloath which the deceased had about him: And as to there being no Water in the Body when the Surgeons examin'd it, it might probably have run out before; the Body having been several times stirr'd before that time: Besides, Albeit a Man who is unwillingly drowned, by his endeavouring to breath as long as he can may suck in much Water: Yet, when a Man drowns himself, he may be supposed to hold his Breath for the quicker Dispatch, and his keeping his Breath might occasion the Body to float, and prevent the Water coming in.

That the great Collar about the Deceased's Neck, and which he was pull'd out by, soon after he was dead, had bruis'd his Neck and occasion'd the congeal'd Blood there: And that the Ice being unbroke between the Bank and the Place where the Body lay (tho' very thin) made it apparent that the Deceased jumped in.

That as to the Opinions of the Physitians and Surgeons, they were founded upon the Report of One or Two Surgeons, on whose Skill, or Ignorance that Matter depended. But

But whatever the Presumptions were of the Deceased's being murder'd they could not affect the Prisoner, unless it had appeared that he was concerned in it.

As to what was suggested of the Prisoner's vicious Life, it ought not to be insisted on, not being laid in the Indictment. And, for his having threatened to cut this or that Man's Throat, that was not sufficient to put the Prisoner upon proving who did this Murder, without other Circumstances: And the Evidence of the Mother and the other Son was not to be regarded, for that Sir *James* apprehended they design'd Mischief against him, and were induced to give a partial Evidence against the Prisoner to clear themselves from Suspicion.

As to the bleeding of the Corps he insisted on the Answer that had been given to it before and added, that tho' the Prisoner had assisted to lift the Body before the Incision was made, it did not bleed upon his touching it then; and that it happen'd to do so now only by his pressing the Part where the Incision had been made: And, that the Prisoner's appearing surpriz'd at the Sight of his Father's Blood, was to be attributed to natural Affection and filial Piety rather than be made a Presumption of his Guilt. Sir *Patrick Hume* added in behalf of the Prisoner, That, as to the treasonable Health, it could be prov'd that the Prisoner was then drunk.

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As to the Act of Indemnity, it extended to all Crimes but the Arch-Bishop's Murder, which being only excepted, all others must be intended to be pardon'd.

And, as to the Prisoners having threatened to cut Throats when in a Passion, the Argument might be retorted; for tho' he threatn'd, nothing followed, and so his Threatnings were but *Verba jactantia*,

That, as to the Citation out of Matters of a Person's being punished with Death upon Presumptions: The Case there mentioned, was of a Person who was apprehended in the Place where the Murder was committed, with a bloody Sword of the Size of the Wound, and, who was found in great Terror endeavouring to escape, which were Circumstances that could admit of no other Con-

struction; but, that nothing of this sort could be pretended in this Case. The Court having considered the Indictment, directed the Assize (or Jury) as to the Points of Law contained in it. 1. That drinking Confusion to the King was Treason. 2. That Cursing his Father as laid in the Indictment, was punishable with Death: And, that the Act of Indemnity would not avail the Prisoner, it not being design'd to extend to those of his Quality.

That, as to his Father's Murder, presumptive Proof was legal Proof; whereupon the Prisoner might be punish'd with Death: But, whether the Presumptions here were sufficient was left to the Assize (or Jury) to consider of, also, the Prisoner should be admitted to produce Witnesses of his Father's Melancholly the Day before his Death, which the Jury were likewise to consider of: But, the Court rejected the other parts of the Prisoner's Defence as not material.

Then the Court adjourned 'till two a Clock the next Day, and the Assize and Witnesses were ordered to attend again at that Time, in Pain of 200 Marks a Piece for their Neglect.

Edinburgh the 7th, Feb. 1688.

The Jury consists of Fifteen

The Court being met, and the Assize (consisting of Fifteen Merchants and Tradesmen) being Sworn without any Challenge or Exception to any of them, His Majesty's *Advocate* produc'd his Witnesses.

Robertson's Evidence of the Prisoner's drinking Confusion to the King.

John Robertson, Servant to the Deceased, aged Twenty Four Years, unmarried, purg'd of Malice, Prejudice, Hatred, Ill Will and Partial Council, and solemnly Sworn, depos'd, That, he saw the Prisoner a little before Harvest last in the Kitchen at *New-Milns*, drink, Confusion to the Pope, Antichrist, the Chancellor and the King, and commanded the Deponent to drink it on his Knees, and that the Prisoner was not drunk at that Time: And, that the Deponent saying it was Treason, the Prisoner answer'd, Ye Dog, What are you concerned, Ye do not understand to whom ye speak.

Agnes Bruce to the same purpose.

Agnes Bruce depos'd, that a little before Harvest last in the Kitchen at *New-Milns*, she saw the Prisoner

Prisoner drink Confusion to the Pope and the King, and made *Samuel Spofforth* drink the same on his Knees; and it being talked of in the House about a Week after, he said to this Deponent, *God damn him*, if he knew who divulg'd it, he would be their Death.

Samuel Spofforth, Servant to the Deceased, depos'd to the same Effect.

John Robertson aforesaid, further depos'd, that since Harvest last he heard the Prisoner wish the Devil might take his Father. And at another Time, the Deponent telling the Prisoner he was going to such a Place with his Father, he pray'd the Devil might let none of them come back, either Horse or Man. And on other Occasions he had heard the Prisoner say of his Father, *the Devil damn him*, *the Devil Rive him*, &c. and said, his Father girn'd upon him like a Sheep's-Head in a Tongs.

Robertson's Evidence of his Curfing his Father.

William Scot, depos'd, He heard the Prisoner wish the Devil might take his Father.

Agnes Bruce abovesaid, further depos'd, That she had often heard the Prisoner Vow, and Swear he would kill any Person that offended him. That he convers'd much with *Janet Johnston*, *George Tomson* and his Wife (charged with being concerned in this Murder) and us'd after Supper at his Father's to go to these Persons. That she has frequently heard the Prisoner Curse his Father, and express his Hatred and Abhorrence of him, and say, he had hated his Father these Seven Years; and this in his Mother's Presence. That, the *Friday* before Sir *James's* Death, *Janet Johnston* was a considerable Time with the Prisoner in his Chamber. That she thought Sir *James* not so merry as usual the Night before his Death. That, on the *Saturday* Night when Sir *James* came home, he went to his Lady's Chamber, where he did not stay a Quarter of an Hour; and that his Lady fell a quarrelling with him for going to another House before he came there. That, the next Morning when Sir *James* was miss'd, the Deponent went into his Chamber to make a Fire, and found the Bed in better Order than usual, and the Candle at the Bed's Feet, which used to be at the Head. That, the Deponent

Bruce's Evidence of his Curfing his Father, &c.

The Prisoner's Behaviour on finding the Corps.

Deponent desiring the Body might be brought up to the Chamber, the Prisoner answer'd, it should not enter there, for he had died more like a Beast than a Man; and that it was brought to a Cellar within the Close, where was very little Light. That she heard the Prisoner cry and lament when his Father's Body was found, but saw no Tears. That he would have forc'd his Father's Chamber-Door open, but the Key being found he enter'd, and took the Gold and Money out of his Pocket, and then search'd the Cabinet; that, within an Hour after his Father was brought from the Water he got the Buckles of his Shoes and put them in his own. That, a short Time before Sir *James* died, his Lady having fallen into a Swoon, and afterwards telling the Prisoner he was like in a short Time to lose his Mother, he answer'd in the Deponent's hearing, that his Father should be dead first. That Two Nights after Sir *James's* Death, the Lady told this Deponent that she heard the Prisoner had Vow'd his Brother's Death, and little less as to his Father, upon his hearing Sir *James* was about to settle his Estate upon his Brother: And, that the Lady renewed the same Expression to this Deponent at *Edinburgh*, and added, What if they should put her Bairn in Prison!

John Shard deposes, the Prisoner threatened to cut his Father's Throat.

John Shard, Servant to the Deceas'd, depos'd, That, a little after the Prisoner's Marriage, he heard him complain his Father dealt too narrowly with him, being then married: And said, if he knew his Father would give his Estate to his Brother *John* he would cut his Throat (meaning his Father's Throat as the Deponent understood it) That, the Deponent was with Sir *James* in his Chamber at *Edinburgh*, the Night before he died: That he was reading a Sermon and appeared very sad; and said to the Deponent, I have no Comfort in my Wife or Family.

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Mackenzie deposes, he had attempted his Father's Life.

Roderick Mackenzie, Advocate, depos'd, That, about Eight Days before Sir *James's* Death, the Deponent observing him to be under some Concern, ask'd him what troubled him; and the Deceas'd answer'd, he had no Satisfaction at home: That his Son was the greatest Debauch upon Earth, and

and what troubl'd him most was, he had twice attempted his Person.

Archibald Dunbar, Merchant, depos'd, That, having met the Deceased at *Cutler*, and being with him and some other Company in a Room, *Sir James* was discoursing of his Son's Undutifulness, and they heard a Shot at the outer Door, and soon after another; and some of the Company offering to go down, *Sir James* dissuaded them, and said, it might be he his distracted Son *Philip*; and they asking why he should fear any Harm from him, he told them that as he was going to *Lothian Burn*, he shot Two Pistols at him, and that if he had not been better mounted than his Son he had kill'd him: And one saying, sure there could not be Ball in them, *Sir James* said he had too many Proofs of his Son's unnatural Behaviour to him. That, *Sir James* went not to Bed, but the Deponent sat up with him that Night, and convey'd him into *Edinburgh*.

Dunbar to the same Effect.

Mr. William Clerk, Advocate, depos'd, That, *Sir James* ordering him to draw a Settlement, in order to dispose of his Estate to his Son *John*; the Deponent dissuaded him from it, saying, his Son *Philip* might be reclaimed: But, *Sir James* answered, he had no Expectation of it, for when he was at the *Lead Hills* there was a Pistol shot at him, which he was sure came from his Son *Philip*.

Clerk deposes, the Deceased told him his Son had fired a Pistol at him.

John Bell, Minister of the Gospel, depos'd, That the Day before *Sir James* died, he accompanied him from *Edinburgh* to his House at *New Milns*; and both by the Way, and at Supper, his Discourse was Rational and Pertinent. That after Supper, *Sir James* went with the Deponent to his Chamber, and staid with him till Ten a Clock; and he discern'd nothing but a sound Judgment in what he said.

Bell, the Minister's Account of what happened the Night Sir James was kill'd, &c.

That the Deponent awak'd in the Night, and heard a great din and confused noise of several Voices, and sometimes of Persons walking, which affrighted him, and put him upon bolting his Chamber Door faster; that he still heard the Voices, but not so plain, till they came about to the Chamber Window, and then he heard the Voice as high as before;

before; whereupon he rose again, and would have look'd out of the Window, but could not open it: That it look'd to the Garden and the Water, whither the Voices went on, till he heard no more.

That he told the Women who came to light his Fire in the Morning, that he had rested little, thro' the Din he heard; and that he was sure there were evil Spirits about the House that Night. That about an Hour after Day, the Prisoner came to the Deponent's Chamber, and ask'd, If Sir *James* had been there that Morning? and said, he had been seeking him on the Bank of the Water, and immediately went down Stairs again. That the Deponent follow'd to see what he meant, and one came running, and said, they had found Sir *James* lying in the Water; which so astonish'd the Deponent, that he return'd trembling to his Chamber, and soon after took Horse.

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That the Deponent returning in the Evening, advised the Prisoner to have the Corps view'd by his Friends and Physicians; but he went and buried Sir *James* that Night, without acquainting the Deponent, or the honest Men of the Neighbourhood.

James Murehead, Surgeon, depos'd, That upon the Prisoner's assisting to lift the Body, after it had been sew'd up, and clean Linnen put on, it darted out Blood through the Linnen, from the Left side of the Neck, which the Prisoner touch'd: But that when the Deponent, and the other Surgeon put on the Linnen, and stir'd and mov'd the Head and Neck before, he saw no Blood at all.

The said *James Murehead* and *James Cranford*, Surgeons, further depos'd, that being order'd by Sir *John Dalrymple*, his Majesty's Advocate, to view the Corps, they observ'd the Face a little swell'd, &c. Upon whose Report, the Surgeons of *Edinburgh* gave their Opinions as follows.

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The Surgeons give their Opinion that the Deceased was not drown'd.

That whereas there was found a Swelling, and præternatural Redness in the Face, a large conspicuous Tumour, about three Inches broad, of a dark red or black Colour, from one side of the *Larynx*, round backwards to the other side thereof; a large swelling betwixt the Chin and the *Cartilaga Scuti-*

Scutiformis: The Jugular Veins, on both sides, very large and distended, and when Incision was made downwards, betwixt the *Os hyoid* and *Larynx*, was observ'd a laxness, and distance between the *Os hyoid* and the *Cartilago Scutiformis*; Incision was made cross along the Tumor, it was found full of bruised Blood; the Jugulars, likewise, when open'd, yielding a considerable quantity of Blood, especially on the Left side, no Smell or Corruption appearing in any part of the Body. It is very probable these Parts have suffered some external Violence, which hath made them appear so far different from their natural Figure and Colour, and could not be caused by drowning simply. That the Breast and Belly being opened, and the Lungs found distended, the *Bronchi* full of Air, without any Water, nor any Water found in the Stomach or Intestines; a Body, when drown'd, being generally found to have much Water in it, with other Circumstances of the Report consider'd, gave just ground to think he was not drown'd.

The College of Physicians at *Edinburgh*, having, at the desire of his Majesty's Advocate, consider'd the said Report of the Surgeons, deliver'd their Opinions, that there was sufficient Grounds to believe the said Sir *James Stansfield* was Strangled and not Drown'd.

The College of Physicians of Opinion he was strangled.

Humphry Spurway depos'd, That about six Weeks before the Death of Sir *James*, he went to wait on him, and finding him not so pleasant as usual, the Deponent enquir'd the Reason of his Melancholy? and Sir *James*, with a great Sigh, wringing his Hands, with Tears trickling down his Cheeks, answer'd, he had great Cause for it. That he had born his own Burthen without complaining to others; but he had a very wicked Family, and it was very sad that a Man should be destroyed by his own Bowels: That let him be never so sparing at Home and Abroad, yet his Family at Home consum'd him; and descended to several Particulars of extravagant Sums Monthly brought in, that his Family had expended above what he allow'd them, which was very sufficient. But what griev'd him most, was, That his youngest Son, whom he had

Spurway's Evidence of the Deceased's Concern on Account of his Family.

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had some comfortable Hopes of, and whom he had settled his Estate upon, was debauch'd by his eldest Son, and several times, of late, came home Drunk as the other.

That the *Saturday* Night Sir *James* dy'd, the Deponent happening to come into the House of one *Marr*, at *New Milns*, found Sir *James*, and Mr. *Bell* the Minister there, sitting by the Fire, they being lately come from *Edinburgh*. That he apprehended Sir *James* had some Fear upon him, that he did not go first to his own House. That while the Deponent sat with him, Sir *James* sent Home to know if his Fire was kindled? and Word being brought him that it was, Sir *James* and the Minister went home. That the next Morning, the Deponent hearing Sir *James* was missing, was going out his Door, and met the Prisoner, who said to him, Lord! What should be the Occasion of this Man's Discontent, that he should thus leave his Lodgings, and walk out? To which the Deponent reply'd, Do you wonder at his Discontent, who never gave him Content? whereupon the Prisoner turn'd his Back upon him: However, the Prisoner went up to Sir *James's* House, but could not procure the Keys of the Garden. Then he sent out some of Sir *James's* Servants, and his own, to look for him; and at length, *William Bowman*, one of the Deponent's Servants, found him in the River, a little West of the Town. That the Deponent went thither, and found the Corps floating on the Water, about eight Foot from the Rivers brink, lying on the Belly, with only a Coat and Waistcoat loose about him; that the Bank of the River was beaten to mash with Feet, and the Ground very open and mellow, although it was a very hard frosty Morning.

And of their
searching for
the Corps.

And of their
burying the
Corps, and
taking it up
again.

That on the *Monday* Morning, the Deponent arose about three or four a Clock, and saw great Lights at Sir *James's* Gates, and upon Inquiry, found they were carrying Sir *James's* Corps to be buried at *Morum*, and pretended it was by my Lord Advocate's Order. That on the *Tuesday* Night, the Deponent was call'd out of his Bed by Mr. *Alexander Campbell*, who, with two other Gentlemen,

Gentlemen, and two Surgeons, came with an Order from my Lord Advocate, to take up the Body again; which they did, and carried it into the Church, and there opened it: And that they found it in that Condition, as was above deposed by the Surgeons. And that the Corps bled on the Prisoner's touching it, as is testified above.

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James Mitchel, Nephew to the Deceased, depos'd, That about twenty Days before Sir *James's* Death, he heard the Prisoner say, That if his Father disposed of his Estate from him, he would kill him, though he died in the *Grass Merret* for it.

Mitchel deposes the Prisoner threatned his Father's Life.

James Dick depos'd, That as they were discoursing about the finding of the Body, the Prisoner said he saw it before any of them. That the Deponent saw the Body taken out of the Water, and went along with it, but observ'd no Water came from it.

His Majesty's Advocate desir'd that *James Thomson*, Son to *George Thomson*, and *Anna*, Daughter to *Janet Johnstoun*, Spouse to the said *James Thomson*, might be examin'd as Witnesses against the Prisoner; but the Prisoner's Council opposed it, for that they were but Children, the Boy being about Thirteen, and the Girl about Ten Years of Age: Whereupon the Court refused to admit them, but in regard the Jury desir'd it, they were permitted to declare what they knew, viz.

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The said *James Thomson* declar'd, That *Janet Johnstoun* came to *George Thomsons* (his Father's) House, between Nine and Ten a Clock that Night Sir *James* was kill'd, and that the Prisoner came thither soon after. That the Declarant's Mother order'd him to go to Bed, which was in the same Room, and beat him because he did not go presently. That *Anna Mark*, the said *Janet's* Daughter, came for her to give her Child Suck, but that *Janet* staid a considerable Time after, and whisper'd with the said *George Thomson*. And the Declarant says further, that he heard the Prisoner complain, that his Father would not give him Money, and pray'd the Devil might take his Father, and God damn his own Soul if he should not make an End of his Father, and then all would be

Two Children, one of Ten, the other Thirteen Years old, permitted to declare what they knew of the Murder of the deceased.

be his, and he would be kind to them. Declares *Philip Stansfield* and *Janet Johnstoun* went away about Eleven a Clock, and soon after his Father and Mother came to Bed. But the Declarant perceiv'd his Father and Mother rose afterwards in the Night, and went out of the House, and staid away an Hour and half, or two Hours. That his Mother came in first, that the Declarant pretended to be asleep when they return'd, and that he heard his Father say, the Deed was done, and that the Prisoner guarded the Door with a drawn Sword and a bended Pistol, and that he never thought a Man would have died so soon; and that they carried him out to the Water side, and tied a Stone about his Neck; and leaving him there, they came back to the little Kiln, and consider'd if they should cast him in the Water with the Stone about his Neck or not, and whether they should cast him in far, or near the side; and at length they return'd, and took away the Stone from about his Neck, and threw him in the Water: And his Father said, he was afraid, for all that, that the Murder would come out. And his Mother said, Hout Fool, there is no fear of that; it will be thought he has drown'd himself. Declares, that when *Sir James* was found in the Morning, his Mother said to his Father, Rise quickly, for if ye be found in your Bed, they will say that ye have a Hand in the Murder. Declares, that the Coat and Waistcoat *Sir James* had on in the Water, being sent to their House, his Mother said, she was affrighted at it, and desir'd his Father to send it away; that his Mother said she was afraid to stay in the House in the Evening, and therefore went out with his Father, if he went out, ever since *Sir James* died, which she did not use to do before.

Anna Mark, Daughter to *Janet Johnstoun*, declar'd, That on the *Saturday* Night *Sir James* was kill'd, the Prisoner came to her Mother's House, and sent for *George Thomson* and his Wife, and then sent her to see if *Sir James* was come home? and upon her bringing Word that *Sir James* was come, the Prisoner ran down to *New Milns*. That about Eleven a Clock the same Night, her Father sent

sent her to find her Mother, and that she found her with the Prisoner, at *George Thomson's* House, but that her Mother did not come home till Two in the Morning. Whereupon her Father said, Bitch, Whore, Where have you been so long? and she answer'd, Where-ever I have been, the Deed is done, and then went to Bed. And that her Mother, ever after that, was afraid to be alone.

Sir *George Mackenzie* summ'd up the Evidence, and made his Observations upon it, which contain'd little more than Sir *John Dalrymple* had taken Notice of before; save, that *Janet Johnston*, so often mentioned, was the Prisoner's Concubine; and that she being his Father's known Enemy, he would hardly have frequented her Company, but upon so barbarous a Design. That the Prisoner, ever since his Confinement, had liv'd so Impious and Dissolute a Life, as shew'd he had nothing to restrain him from committing the greatest Crimes. That his own Council seem'd to acknowledge the Proof to be unanswerable, having deserted their Client, and left the Court before half the Evidence was given.

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Then his Majesty's Advocate protested for an Affize of Error against the Inquest, in Case they should acquit the Prisoner.

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But the Jury found the Prisoner Guilty of all the Facts laid in the Indictment; viz. Of Treason, Cursing his Father, and being Accessary to his Murder. Which Verdict was subscribed by *William Baillie*, of *Lamington*, Chancellour, i. e. Foreman.

The Prisoner found Guilty of all the Crimes laid in the Indictment.

Then Sentence was pass'd upon him, as usual in Cases of High Treason.

Sentence pronounced.

Page 729. *The Tryal of the most Reverend Father in God, Dr. WILLIAM SANCROFT, Lord Archbishop of Canterbury; and of the Right Reverend Fathers in God, Dr. WILLIAM LLOYD, Lord Bishop of St. Asaph, Dr. FRANCIS TURNER, Lord Bishop of Ely, Dr. JOHN LAKE, Lord Bishop of Chichester, Dr. THOMAS KENN, Lord Bishop of Bath and Wells, Dr. THOMAS WHITE, Lord Bishop of Peterborough, and Sir JONATHAN TRELAWNEY, Lord Bishop of Bristol.*

Die Veneris 15to Junii, Trin. 4 Jac. II. 1688. B. R.

Sir Robert Wright, Ld. Ch. Justice.
 Mr. Justice Holloway,
 Mr. Justice Powell,
 Mr. Justice Allybone. } Judges.

The Bishops brought from the Tower to the Bar of the King's Bench by Habeas Corpus.

The Return, wherein is recited the Warrant for their Commitment, by the Privy Council.

THIS being the first Day of the Term, Mr. Attorney mov'd, on behalf of the King, for an *Habeas Corpus*, returnable *immediate*, directed to the Lieutenant of the Tower, to bring up my Lords the Bishops, (*which was granted.*)

About Eleven a Clock the same Day, Sir Edward Hales, the Lieutenant, return'd his Writ, and brought my Lord Archbishop and Bishops into Court. Then the Return was read, by which it appear'd their Lordships were committed to the Tower, by Virtue of a Warrant under the Hands and Seals of George Lord Jefferies, Baron of Wem, Lord High Chancellour of England, Robert Earl of Sunderland, Lord President of the Privy Council, &c. Lords of his Majesty's Privy Council. And in that Warrant it is express'd to be, *For Contriving, Making, and Publishing, a Seditious Libel in Writing, against his Majesty and the Government.*

Att.

Att. Gen. When their Lordships appear'd before the Council, they were not pleased to give their Recognizances to appear here, and thereupon they were committed to the *Tower*; and now come before the Court, upon this Return of the King's Writ of *Habeas Corpus*. What we are now to offer to your Lordship is, The Officer of this Court has an Information against his Grace the Archbishop of *Canterbury*, and the rest of my Lords the Bishops, which we desire may be read to them; and pray that they may plead to it, according to the Course of the Court.

Mr. Attorney prays the Information may be read.
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Sir Robert Sawyer. If it please your Lordship to spare us a Word for my Lords the Bishops?

Sol. Gen. We oppose your speaking any Thing, till the Information hath been read; it is Irregular to move any Thing yet.

Sir Robert Sawyer. Now is our proper Time, I move to discharge my Lords the Bishops from their Commitment. If they are not legally Imprison'd, now they are before your Lordship upon this Writ, you will give us leave to move for their Discharge, before any Thing else be said to them.

The Bishops Council move they may be discharg'd before it is read, they having been illegally Committed.

Sol. Gen. These Gentlemen are very forward, but certainly they mistake their Time. This is a *Habeas Corpus* that's brought by the King, and not by the Prisoners, and therefore they are too soon, till they see what the King has to say to them.

Serj. Pemberton. My Lord, If we are not here as Prisoners regularly before your Lordship, and are not brought in by the due Process of the Court, then the King's Council or the Court have no Power to charge us with an Information; therefore we beg that you will hear us to that in the first place, Whether we are legally here before you?

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Mr. Finch. My Lord, We say that it doth appear by this Return, that my Lords the Bishops, are not legally here in Court, because this Commitment of theirs, was not a legal Commitment: And two Objections we have to it, the one is, That the Persons Committing, had no Authority to Commit; for the Return says, That it is by

1. Because the Return says they were committed by such Lords of the Council, but not in Council; and those Lords have no Power to commit but in Council.

2. That a Peer cannot be committed for a Misdemeanor, but ought to be serv'd with the usual process of *Subpana*.

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Virtue of a Warrant under the Hands of such and such, being Lords of the Council: And they, we say, have no Authority to do this. The other Objection is, That the Fact for which they are committed, they ought not to be imprison'd for. The Fact charg'd upon them is in the Nature of a Misdemeanor; and for such a Fact, it is the Right of my Lords the Bishops, as Peers of the Realm, to be serv'd with the usual Process of *Subpana*, and not to be committed to Prison. These are the two Objections we have to this Return, and this is the proper Time for us to make these Objections, before the King's Council can charge my Lords the Bishops with an Information.

Just. *Allybone*. I do not apprehend that the Objection you make, has any Weight in it. You say, these Lords were not legally Committed, because they were Committed, says the Return, by such and such Lords of the Council, particularly named, and it does not specify them to be assembled in Council. Now, if my Lord Chief Justice do commit any Person, and set his Name to the Warrant, he does not use to add to his Name, Lord Chief Justice, but he is known to be so without that Addition. And the Lords do not use to write themselves Privy Counsellors, they are known to be so, as well as a Judge, who only writes his Name, without the addition of his Office.

Sir *Rob. Sawyer*. I do not take Exceptions to the Warrant, because it is subscribed by such Lords, and they do not write themselves Lords of the Council, they need not do that; and the Return has aver'd that they are so. But the Return ought to have been, *That it was by the Order of the Privy Council*, and not by such and such particular Persons, Lords of the Privy Council. So in the Case put by Mr. Justice *Allybone*, of a Commitment by your Lordship, or any of the Judges, it must be return'd to be by such a Warrant, by such a One, Chief Justice, for that shews the Authority of the Person Committing; and then your Lordship's Name to it, indeed, is sufficient, without the Addition. But if it does not appear by the Return, that there was sufficient Authority in the Person

Person to Commit, your Lordship cannot take it to be a legal Commitment. And sure that which was said by the King's Council, that your Lordship may Charge any one that you find here in Court, with an Indictment or Information, cannot be legal.

Mr. Finch. There is a great difference between a Commitment made by a Judge, who is always so, and a Commitment by a Lord, or so many Lords, by the Name of Lords of the Privy Council; who do not carry their Authority about with them, but are limited to their Assembly in Council.

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Att. Gen. They would have my Lords the Bishops discharg'd, because there is not a Return of a good Commitment, and that stands upon this presumption, That what is here said to be done by all these Lord, at the end of whose Names this is added, *Lords of the Privy Council*, was done by them out of Council, which I suppose your Lordships will not presume; but will take it, that they did this as Lords of the Council, in Council; and no Man can say, but the Lords in Council can Commit.

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Answer to the first Objection, that it is not to be presumed that this Commitment was by the Lords out of Council.

Sol. Gen. You may as well presume upon a Warrant made by my Lord Chief Justice, because it is not said where he made it, that he did it in Scotland.

Mr. Pollexfen. I deny not but that the Council may Commit; but the Question is, Whether this Return of their Commitment be right? Suppose there should be a Return to an *Habeas Corpus*, that such a one was committed by Sir Robert Wright, and three others by Name, Justices of this Court, for a Contempt; without saying that it was done in Court, this would be an ill Return. For tho' they had Power to commit for a Contempt, yet it must appear that it was done in Court, or it cannot be a good Return: And I believe, if your Lordship thought fit to give us a short Time, we should be able plainly to shew, that all the Returns of Commitments of this Nature, are said to be by *Order of the Council Board*, and never any of them naming the Lords; for that may be true, and yet not a legal Commitment.

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L. C. J. I have seen several Precedents of Commitments in this Form; and if you make no Exception to the Warrant, you can make no Exception to the Return, for that only sets forth the Warrant.

Mr. Pollexfen. The Commitment you are to judge of, is upon the Return; and supposing the Warrant to be Right and Good, yet the Return is not Legal.

L. C. J. If you would have our Opinions, let my Brothers declare theirs.

Just. Powell. I think we ought to consult Precedents, in a Case of this Weight and Nature; and truly, I will not take upon me to say, whether it be a good Return, or not a good Return, without looking into Precedents.

Just. Allybone. When a Man that has Authority to Commit, does commit a Person to an inferior Officer, and that Officer has an *Habeas Corpus* brought to him, it is enough for him to return his Warrant, by which the Party is committed: And whatever he says by the bye, cannot have any influence one way or other, to alter the Nature of the Thing. Now, unless you will make every Man that is a Justice of the Peace, write his Name, and stile himself Justice of the Peace, this must be a good Commitment. Every Commitment shall be presum'd to be pursuant to the Power of the Person Committing; and this Warrant is return'd by the Officer, and I cannot but presume that it is very well.

Ruled, That every Commitment shall be presum'd to be pursuant to the Power of the Persons committing.

Just. Holloway. I see it is agreed on both sides, that the Council have a Power to Commit, and the Commitment is here certified in the Words of the Warrant; and the Lieutenant has made his Return, that they were Committed by Virtue of this Warrant. But you find fault with his Return, because he does not say the Warrant was made by the Lords of the Council, *in Council*. I do not see but this is a very good Return, and my Judgment is, That the Information ought to be Read.

L. C. J. I am of the same Opinion, I find no Fault with the Warrant, nor with the Return.

Att. Gen. We pray my Lord, the Information may be read.

Mr. Finch. My Lord, we oppose the Reading of it. We have another thing to offer, we must have the Opinion of the Court in, before this Information can be read. We say my Lords, the Bishops ought not to have been committed at all, and therefore when they now appear upon this *Habeas Corpus*, We say they were not legally committed to Prison, because a Peer ought not to be committed to Prison for Misdemeanours.

Mr. Attorney and I agree, That a Man that does come into Court, if he does not come in by legal Process, he is not to be Charg'd with an Information. Then, since We do agree in that Proposition, certainly we must be heard to this Point, whether we are here upon legal Process before you can Charge us with this Information.

Att. Gen. You take upon you to make me agree to what you please; but this is that that I say, if a Man comes in voluntarily upon any Recognizance, tho' he be not in Custody; or if he comes in upon any Process, if the Court find him here, tho' that Process be not for the Thing Charg'd in the Information, yet, the Court is so much in Possession of the Person that he shall plead to any Information; and that I do say, and will stand by.

Sol. Gen. If a Person be brought into Court by legal Process, or upon any Contempt whatsoever by an Attachment or Warrant, or upon a *Habeas Corpus*, after a Commitment, being thus found in Court your Lordship may certainly Charge him with an Information.

Mr. Finch. I say he cannot, if the Process be wholly illegal; for he cannot be said to be legally in Court. If a Peer be taken upon a *Capias* and is committed to the *Marshalsea*, and is brought up upon a *Habeas Corpus*, I would fain know whether you could declare against him: Then is it not a proper Time now to make this a Question, whether my Lords here were legally committed before you, can lay any thing to their Charge by way of Information? For, if the Commitment be illegal it is a Void Commitment, and if the Commitment

Page 737.

If one does not come into Court by legal Process he cannot be Charged with an Information.

But if he come into Court by legal Process, he shall plead to any Information, tho' it be for another Thing.

is Void, the Proceſs is Void, and then, my Lords are not legally in Court.

Page 738.

For Treason,
Felony, or
Breach of the
Peace, a Peer
may be com-
mitted.

Serjeant Pemberton. My Lords, We ſay, that the Lords of the Council have illegally committed theſe Noble Perſons, who are Peers of the Realm, and ought to have the Privilege of their Peerage: Which is, not to be committed for a Miſdemeanour, and to be imprifon'd, eſpecially upon the firſt Proceſs, any more than they may be in Caſe of a Debt. It is true, in the Caſe of Treason, Felony, or a Breach of the Peace, the Peers have not ſuch a Privilege; but, for a Miſdemeanour, as this appears to be, they ought not to be committed: And therefore, we pray my Lords may be diſcharg'd.

Page 739.

Sir Robert Sawyer. It cannot be deny'd that all Informations whatever, unleſs ſuch as are for Breaches of the Peace; *for which Surety of the Peace may be required*, are under the Controul of the Parliament Privilege. Now my Lord, I take it that the Privileges of Peers is in all Times the ſame with the Parliamentary Privilege in Parliament Time, which reacheth to Informations as well as other Actions: My Lord *Coke* is expreſs in this Point. 4 *Inst.* 25.

If that Objection ſhould hold good, that every Information being *contra pacem*, that ſhould be a Breach of the Peace, Privilege will hold in no Information.

Att. Gen. Can any Man ſay that a Libel does not require Sureties of the Peace.

Page 740.

The making
a Seditious
Libel, deem'd
an actual
Breach of the
Peace.

Juſtice Allybone. The Single Queſtion now is, Whether or no the Crime laid to the Charge of my Lords the Biſhops, *which is a ſeditious Libel*, be a Breach of the Peace. I confeſs, there is little of Argument to be drawn from Forms of Indictment, and I ſhall put no great Streſs upon the Words *Vi & armis*, where the Fact will not come near to it: but, if a Commitment may enſue (as they ſeem to agree) wherever Surety of the Peace may be required, nothing ſeems more plain to me, than that Surety of the Peace ſhould be required where there is any thing of Sedition in the Caſe. And wherever there is a ſeditious Act I cannot tell how
to

to make any other Construction of it, but that it is an actual Breach of the Peace.

Justice Powel. This is a matter of Great Consequence, all the Noble Peers of *England* are concern'd in it as to their Privilege, and therefore I will not take upon me to deliver any Opinion, before I have consulted all the Books that may give me any Light in the Case.

Page 741.

Justice Holloway. Every Misdemeanour is not a Breach of the Peace, but certainly there are some Misdemeanours that are Breaches of the Peace: And, if here be such a Misdemeanour before us, then it is acknowledged, that even in Parliament Time, a Privilege Person may be committed for it. For in Treason, Felony, and Breach of the Peace Privilege does not hold. I will not take upon me to determin concerning the Privilege of the Peers, it is not of our Cognizance, nor do we determin whether this be such a Libel as is Charg'd in the Information, that will come in Question another Time; but certainly as this Case is, the Information ought to be Read, and my Lords ought to appear and plead to it.

L. C. J. We are all of us tender of the Privileges of the Peers. But, since there can come no Mischief to the Privileges of the Peers by what is agreed on all Hands, I think I may very justly give my Opinion. Here the Question is, Whether the Fact Charg'd in the Warrant be such a Misdemeanour as is a Breach of the Peace? And the Words of the Warrant (which is now upon Record) being such as have been recited, I cannot but think it is such a Misdemeanour as would have required Sureties of the Peace: And if Sureties were not given, a Commitment might follow, and therefore I think the Information must be read.

Rul'd that the Information should be Read.

Clerk Reads. Memorandum, That Sir Thomas Powis Knight, Attourney General of our Lord the King, who for our said Lord the King, in his Behalf, prosecutes, &c.

Sol. Read it as it is in *Latin*.

Bishop of Peterborough. My Lord, We desire it may be Read in *English*, for we do not understand Law *Latin*.

Sol.

The Informa-
tion read in
Latin.

Sol. No my Lords, the Bishops are very learn-
ed Men (we all know) pray read it in *Latin.*

Then the Information was read in *Latin.*

The Declara-
tion for Li-
berty of Con-
science recited

Page 742.

The Information sets forth, That the King, out of his signal Clemency and gracious Intention towards his Subjects; by his Royal Prerogative on the 4th Day of *April*, in the Third Year of his Reign, did publish his Royal Declaration, Entitled, *His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience.* [Then the Declaration itself is incerted, the Purport whereof was] That it had always been His Majesty's Opinion that Conscience ought not to be constrained, or People forc'd in Matters of meer Religion. That it was contrary to the Interest of Government by spoiling Trade, depopulating Countries, and discouraging Strangers; and that it never obtained the End. That His Majesty therefore, had thought fit to issue forth this Declaration of Indulgence, making no Doubt of the Concurrence of the Two Houses, of Parliament when they should meet.

And first he declared, that he would protect and maintain the Clergy and other Members of the *Church of England*, in the free Exercise of their Religion, as by Law established; and in the full Enjoyment of all their Possessions: But, that the Execution of all manner of Penal Laws for *Non-Conformity* in Religion should be immediately suspended. Provided, that such *Non-Conformists* meet with their Doors open, and preach nothing that should tend to the Disturbance of the Government: And signify their Place of Meeting to some neighbouring Justice of Peace. And that His Majesty might have the Benefit of the Service of all his Subjects: He farther declar'd, That neither the Test, or the Oaths of *Supremacy* or *Allegiance* should be requir'd to be taken, or subscribed by any Person, on their Admission into Offices, for the future: And did grant a free Pardon, to all those who had committed any thing contrary to the said Penal Laws. And he thought fit further to declare, That he wou'd maintain all his Subjects in their Properties and Possessions, as well of Church and Abby Lands, as in any other their Lands and Property

Property whatsoever. And the Information further sets forth, That on the 27th of *April*, in the 4th Year of his Majesty's Reign, he publish'd another Declaration, [*which is recited in the Information.*] the Purport whereof was, That ever since his Majesty had granted the aforesaid Indulgence, he had made it his principal Care to see it observ'd without Distinction; which his Majesty was encourag'd to do, by the Multitudes of Addresses he daily receiv'd from his Subjects of all Persuasions. That in pursuance of this great Work, he had been forc'd to make many Changes, both of Civil and Military Officers, throughout his Dominions; not thinking any ought to be employ'd in his Service, who would not contribute towards the Peace and Greatness of his Country. And he conjur'd all his Subjects, to lay aside all private Animosities, and groundless Jealousies; and to chuse such Members of Parliament, as might do their part, to finish what he had begun; being resolv'd to call a Parliament, which should meet the following *November*, at farthest.

The King's
2d Declaration
on recited.

Page 743.

Page 744.

The King Ad-
dressed by
Dissenters and
others, on is-
suing his De-
claration of
Indulgence.

And the Information further sets forth, That on the 4th of *May*, 1688, it was order'd by his Majesty in Council, that the said last mentioned Declaration, bearing Date the 27th of *April* last, (in which the first is recited) should be read at the usual Time of Divine Service, on the 20th and 27th of the said Month of *May*, in all Churches and Chappels, within the Cities of *London* and *Westminster*, and ten Miles thereof. And upon the 3d and 10th of *June* then next, in all other Churches and Chappels throughout the Kingdom. And that the Right Reverend the Bishops, should cause the said Declaration to be sent and distributed throughout their several Diocesses, to be read accordingly. And that the said Archbishop and Bishops, the 18th Day of *May*, in the said 4th Year of his Majesty's Reign, having conspir'd and consulted among themselves, to diminish the King's Power and Prerogative, did falsely, unlawfully, maliciously, and scandalously, Make, Compose, and Write, a false, scandalous, malicious, and seditious Libel, under pretence of a Petition, in the Words following.

Order of
Council for
reading the
Declaration
in all Churches.

And that the
Bishops
should distri-
bute it.

The

Page 745. *The humble Petition of William Archbishop of Canterbury, and of divers of the Suffragan Bishops of that Province, (now present with him) in behalf of themselves, and others of their absent Brethren, and of the Clergy of their respective Diocesses.*

The Bishops
Petition
against it, in-
terpreted a
Libel.

Humbly sheweth,

“ That the great Averseneſs they find in them-
“ ſelves to the distributing and publiſhing in all
“ their Churches, your Maſteſty's late Declarati-
“ on for Liberty of Conſcience, proceedeth nei-
“ ther from any want of Duty and Obedience to
“ your Maſteſty. Our Holy Mother the Church
“ of *England*, being both in her Principles and
“ in her conſtant Practices, unqueſtionably Loyal;
“ and having, to her great Honour, been more
“ than once, publickly acknowledg'd to be ſo by
“ your Gracious Maſteſty. Nor yet from any want
“ of due Tenderneſs to Diſſenters; in relation
“ to whom, they are willing to come to ſuch a
“ Temper as ſhall be thought fit, when that Mat-
“ ter ſhall be ſettled in Parliament and Convoca-
“ tion. But among many other Conſiderations,
“ from this eſpecially, Becauſe that Declaration
“ is founded upon ſuch a diſpenſing Power, as hath
“ often been declared Illegal in Parliament; and
“ particularly in the Year 1662, and 1672, and
“ the beginning of your Maſteſty's Reign. And
“ is a Matter of ſo great Moment and Conſe-
“ quence to the whole Nation, both in Church
“ and State, that your Petitioners cannot in Pru-
“ dence, Honour or Conſcience, ſo far make them-
“ ſelves Parties to it, as the Diſtribution of it all
“ over the Nation, and the ſolemn Publication of
“ it, once and again, even in God's Houſe, and in
“ the Time of his Divine Service muſt amount to,
“ in common and reaſonable Conſtruction.—

Which ſaid Libel, the ſaid Archbiſhop and Bi-
ſhops having reſpectively ſubſcribed, did, on the ſaid
18th Day of *May*, in the ſaid 4th Year of the King,
cauſe to be publiſh'd in the Preſence of our ſaid
Lord the King; in manifeſt Contempt of his Ma-
jeſty,

jeſty, and of the Laws of this Kingdom, to the evil Example of others, and againſt the King's Peace, &c. Whereupon the ſaid Attorney General, in behalf of the King, prays Advice of the Court, and Proceſs of Law, to be made out againſt the ſaid Archbiſhop and Biſhops, to answer our ſaid Lord the King, and concerning the Premises, &c.

Sign'd, *T. Powis,*
W. Williams.

Att. Gen. My Lord, We pray, that according to the Rules of the Court in ſuch Caſes, my Lord Archbiſhop, and my Lords the Biſhops, may plead to the Information?

Mr. Finch. My Lord, with humble Submiſſion, we ought to have Time to Imparl, and a Copy of the Information, that we may conſider what we have to plead to it: And this which we deſire for my Lords the Biſhops, is the Right and Privilege of the Subject; for there may be many Defences, that a Man may have to make to an Accuſation of this Nature, which it is impoſſible for him to know at the firſt hearing the Information read; at leaſt to make uſe of, in ſuch a manner as the Law requires. For it may be, the Pleas which he has to plead, may be ſuch, as he has not Time to put into Form. And though the contrary may have been the Practice of later Times, yet you will not take that to be ſuch a Law, as is binding to all future Times. And we are ſure, the King's Council cannot ſhew that this was the ancient Practice, for that is quite otherwiſe.

Juſt. Powel. Certainly, what they deſire for the Defendants is very reaſonable; for I take the Point to be only this, Whether a Man may be compelled, being in Cuſtody, to plead to an Information preſently.

Juſt. Allynbone. If that hath not been the ancient Courſe, without exception, I am againſt it: I know no Reaſon, why my Lords the Biſhops, ſhould have any Thing New put upon them. On the other ſide, they muſt not expect to have the ancient

Mr. Attorney prays the Biſhops may plead immediately to the Information. The Biſhops Council inſiſt, that by the ancient Practice they ought to have an Imparlance.

ancient Course of the Court declin'd in their Case.

Page 747.

Mr. *Pollexfen*. My Lord, It is not my desire that any Law should be alter'd for any particular Case; and the Course of the Court, I know, is the Law of the Court. But to make this Matter clear, I humbly pray, that you would please to give Order for the Search of old Presidents, how the old Practice really hath been. Every Thing that has been done in hot Times, is not to be made a standing Rule: If any such Thing appear to have been done anciently, I will submit. But if this, which is now urg'd for the Course of the Court, is nothing but what the Zeal of the Times has introduc'd, surely it is not fit to be a constant Rule for the Courts to go by. 'Tis a Matter of great Weight, and I hope you will give us such an Impar lance, as if we had this Day appear'd upon the ordinary Process, which is an Impar lance till next Term.

Where one appears upon Summons, he shall have an Impar lance.

L. C. J. There is a difference between this, and that other Case: If my Lords the Bishops had appear'd upon Summons, they would have had an Impar lance of Course; but when they are brought up hither in Custody, that alters the Case. But that we may not be too hasty in a Thing of this Nature, let the Clerk of the Court be consulted with, that we may know what the true Course is.

Page 748.

Serj. *Pemberton*. We would satisfy your Lordship where the Distinction really lieth. Where there has been an Opportunity for the Party to come in, as by Summons, or *Subpæna*, or the like, and he has slip'd his Opportunity, and so the King is delay'd, there they use to put the Party upon Pleading presently, when he is taken on a *Capias*, and brought in Custody. But when there was never any *Subpæna* taken out, as the Case is here, so that the Party never had an Opportunity of Rendering himself, and Appearing to answer, according to the due Course of Law, an Impar lance never was deny'd, or Time to plead.

L. C. J. What say you, Sir *Samuel Astry*?

Sir *Sam. Astry*. I have been about a dozen Years in this Office, and when I came into the Office, I took

took my Instructions, in a great Measure, from Mr. *Waterhouse*, an honest, intelligent Man; who sat in the Place where Mr. *Harcourt* does now, and had been in the Office sixty Years. And I ask'd him, What was the Course of the Court, in this Case that is now in question? And he told me, That in all his Time and Experience, if a Man appear'd upon a Recognizance, or was in Custody, or appear'd in *propria Persona*, as a privileg'd Person, he ought to plead at the first Instance; if the Court, upon particular Reasons, do not give him Time. Accordingly, when Sir *Robert Sawyer* was Attorney General, it was the constant Practice; he knows it is no new Thing.

But if he comes in Custody, or on a Recognizance, he shall plead presently.

Sir *Rob. Sawyer*. Were they Informations upon Misdemeanours, and where no Process was taken out first, to call the Party in?

Though there has been no previous Process.

Sir *Sam. Astry*. Yes, several; where Process was never taken out. It has been often contested, I confess; and Mr. *Pollexfen* has always oppos'd it, and mov'd against it, but it has been always rul'd against him.

Page 749.

Sol. Gen. They make a mighty Stir about the Reasonableness of the Thing: They say, How can it be believ'd, that the Law will not give a Man Time to make his Defence! And yet they agree, that if it were in a Case of Life and Death, they must plead presently. And may not an Argument be drawn *a fortiori*, in the Case of a Misdemeanour? If I am not to have Time when I plead for my Life, there is less Reason I should have Time to answer a Trespass? But, my Lord, 'tis not the Reason that weighs in the Case; 'tis the Course of the Court, which is the Law of the Court, that we are contending for. They would have an Imparlance till *Michaelmas* Term; can your Lordships think they ask what is reasonable, to have near six Months Time to plead *Not Guilty*, to an Information for a Libel? I suppose it is only their Lordships Council that desire this Delay: I believe they themselves, would be glad to remove the Imputation, which would be best done by a Tryal. If they have a mind to justify themselves, that is the

In Capital Cases a Man shall plead presently.

the readiest Course for it; and they may do it presently, by pleading *Not Guilty*.

If it were my own Case, I would desire to have it Try'd as speedily as I could; and therefore, I pray they may plead immediately.

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L. C. J. Here are two other Clerks of the Office, Are you willing they should be ask'd what the Practice has been? *Mr. Harcourt*, How long have you known the Practice of the Court in this Matter?

Mr. Harcourt. I have been Clerk in the Office about Seventeen or Eighteen Years: I cannot charge my Self with Particulars from the Time of my coming in; but for these Ten or Twelve Years past, it has been as *Sir Samuel Astry* has declar'd.

L. C. J. What say you *Mr. Sillyard*, How long have you known the *Crown-Office*?

Mr. Sillyard. I have been a Clerk here about Thirty Years, but I have not sat as Clerk of the Rules, but a little Time. Since I have sat here, I have observ'd it to be the Practice, that one that comes in Custody, should plead immediately.

Page 753.

L. C. J. Well, Gentlemen, Have you done on either side?

Serj. Pemberton. If your Lordship will give us Time till to Morrow Morning, we will come hither by Rule of Court, and bring some Certificates and Affidavits, or else some Precedents, that, we hope, will satisfy your Lordship in this Matter.

L. C. J. Would the Course of the Court be otherwise to Morrow, than it is to Day? We have taken all the Care we can, to be satisfied in this Matter, and we will take Care, that my Lords the Bishops, shall have all Justice done them, without doing Wrong to my Master the King; but, truly, I cannot depart from the Course of the Court in this Matter, if the King's Council press it.

Att. Gen. My Lord, We must pray your Judgment in it, and your direction that they may plead.

L. C. J. Truly I think they must plead to the Information.

Then his Grace of Canterbury stood up, and offer'd a Paper to the Court.

Archbishop.

Rul'd, that
my Lords the
Bishops should
plead pre-
sently.

Archbishop. My Lord, I tender here a short Plea, on behalf of my Self and my Brethren, the other Defendants; and I humbly desire the Court will admit of this Plea.

L. C. J. If it please your Grace, it should have been in Parchment.

Archbishop. We will stand by it, my Lord, it is subscrib'd by our Council, and we pray it may be admittted by the Court.

The Plea was Read, which is thus in English.

“ And the aforesaid *William* Archbishop of *Can-*
 “ *terbury*, *William* Bishop of *St. Asaph*, &c. be-
 “ ing present here in Court, in their own Per-
 “ sons, pray *Oyer* of the Information aforesaid.
 “ And it is read to them; which being read and
 “ heard by them, the said Archbishop and Bi-
 “ shops say, That they are Peers of this Kingdom
 “ of *England*, and Lords of Parliament, and each
 “ of them is a Peer of this Kingdom, and a Lord
 “ of Parliament. And that they being (as before
 “ is manifest) Peers of this Kingdom of *England*,
 “ and Lords of Parliament, ought not to be com-
 “ pelled to answer instantly for the Misdemeanour
 “ aforesaid, mention'd in the said Information,
 “ exhibited here against them in this Court; but
 “ they ought to be required to appear by due Pro-
 “ cess of Law, issuing out of this Court here,
 “ upon the Information aforesaid. And upon
 “ their appearance, to have a Copy of the said In-
 “ formation exhibited against them, and reasona-
 “ ble Time to imparl thereupon; and to advise
 “ with Council learned in the Law, concerning
 “ their Defence in that behalf, before they be
 “ compell'd to answer the said Information. *Where-*
 “ *upon*, for that the said Archbishop and Bishops
 “ were Imprison'd, and by a Writ of our Lord
 “ the King, of *Habeas Corpus*, directed to the Lieu-
 “ tenant of the *Tower of London*, are now brought
 “ here in Custody, without any Process upon the
 “ Information aforesaid, issued against them, and
 “ without having any Copy of the said Informa-
 “ tion, or any Time given them to Imparl, or
 “ be

The Bishops offer a Plea, in Paper, containing in Substance, what their Council had already insisted on.

“ be Advis’d. *They pray Judgment*, and the Pri-
 “ vilege of Peers of this Kingdom, in this Case,
 “ to be allow’d them. And that the said Archbi-
 “ shop and Bishops, may not be compell’d in-
 “ stantly to answer the Information aforesaid.

*Robert Sawyer,
 Henry Finch,
 Henry Pollixfen.*

Att. Gen. This is such an unfair way of proceeding, as would not be endured in an ordinary Case; and the Court is not bound to receive Pleas that are only for delay. Does this Plea contain any Thing, but what has been Argued and Debated, and Settled by the Court already? And if a Man puts in a meer trifling, dilatory Plea, the Court may reject it. It is done every Day, and I hope this shall not have so much Countenance, as to be receiv’d by the Court.

Serj. Pemberton. We put in this Plea, my Lord, and are ready to abide by it; and we say, that according to the Course of the Court, it ought to be receiv’d.

Page 755.

L. C. J. Have the Council dealt ingenuously with the Court in this Matter? After four Hours Debate, and the Opinion of the Court deliver’d, to come and sum up all the Arguments in such a Plea as this; and so put us upon debating the Matter over again.

Mr. Pollexfen. My Lord, certainly this has been done before, and without Offence; after we had mov’d for a Thing which was denied upon Motion: It is no such great Disrespect to the Court, to put the same Matter into a Plea, for the Judicial Opinion of the Court.

Page 756.

Just. Powell. Truly I do not know whether the Court can reject this as a frivolous Plea.

L. C. J. Surely we may, and frequently do.

Att. Gen. You do it every Day; ’tis a frequent Motion, if a frivolous Plea be put in, before it be entred on Record as a Plea, the Court may refuse it if they see Cause.

Just.

Just. *Powel*. I cannot think this a frivolous Plea, it concerning the Privilege of Peers and Lords of Parliament.

Just. *Allybone*. Truly it appears to me, that the Peers are named in it, only for Fashion sake, and it is frivilous. I know not what Power we have to reject a Plea, but if we have Power, this ought to be rejected.

Just. *Powel*. I declare my Opinion, I am for receiving the Plea, and considering it.

Just. *Holloway*. I think, as this Case is, this Plea ought not to be receiv'd, but rejected; because 'tis no more than what has been denied already.

L. C. J. We have ask'd, and inform'd our selves, from the Bar, Whether we may, or can, reject a Plea? and truly, what they have said, hath satisfied me we may, if the Plea be frivolous. And this being a Plea, that contains no more than what has been over-ruled already, after hearing what could be said on both Sides, I think the Court is not bound to receive the Plea, but may reject it, and my Lords the Bishops must plead over.

The Plea rejected as frivolous, and my Lords the Bishops directed to plead over.

Then the Clerk demanded of my Lord Archbishop, and the rest of the Bishops, severally, if he were Guilty or Not Guilty? To which they respectively answer'd, *Not Guilty*.

They plead *Not Guilty*.

Att. Gen. I pray the Clerk may join Issue, on behalf of the King; and we would have these Gentlemen take Notice, that we intend to Try this Cause this Day Fortnight; and we pray Liberty of the Court, that we may Try it at Bar?

Page 757.

L. C. J. Are you not too hasty in that Motion, Mr. Attorney?

Att. Gen. We should, indeed, make that Motion another Day.

Sol. Gen. We now give them Notice that we intend to move.

Sir Rob. Sawyer. For that you need not trouble your selves, we are very desirous it should be Try'd at Bar, and that, as soon as you please. Only I beg of his Lordship, in behalf of my Lords the Bishops, that there may be Forty eight return'd of

Forty eight directed to be return'd of the Jury, and the Jury struck in the presence of the Attornies on both sides.

the Jury; and it may be in the presence of the Attorneys or Solicitors on both sides.

L. C. J. What is the usual Course, Sir *Samuel Astry*? Do you use to return Twenty four, or Forty eight, and then strike out Twelve apiece?

Sir Sam. Astry. My Lord, the Course is both ways; and then it may be as your Lordship and the Court are pleased to order it.

L. C. J. Then take Forty eight, that is the fairest: But what shall we do with my Lords the Bishops?

Att. Gen. They areailable, my Lord, no question of it, if they please.

Their own
Recognizances
accepted for
their Appearance.

Then his Grace of *Canterbury*, enter'd into a Recognizance of 200 *l.* and the rest of the Bishops 100 *l.* apiece, to appear in Court again that Day Fortnight, and so from Day to Day, until they should be discharg'd. And the King's Council did not insist on any Security but their own.

Page 758.
The Tryal
comes on.

Die Veneris 290 Junii, 4 Jac. II. 1688. B. R.

This Day the Tryal of my Lord Archbishop, and the rest of the Bishops, came on.

The Names of the Gentlemen who were sworn, and serv'd on the Jury, were as follows.

The Names
of the Jury.

Sir Roger Langley, Bar.	}	William Avery, Esq;
Sir William Hill, Knt.		Thomas Austin, Esq;
Sir Roger Jenning,		Nicholas Grice, Esq;
Thomas Harriot, Esq;		Michael Arnold, Esq;
Jeoffery Nightingale, Esq;		Thomas Done, Esq;
William Withers, Esq;		Rich. Shoreditch, Esq;

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The Information was Read, (*which see before, No. 741.*) and Proclamation for the Witnesses to appear, as usual; after which, Mr. *Wright* open'd the Information.

Mr. Attorney
states the
Case.

Att. Gen. Before we go to our Evidence, it may not be amiss to settle the Question right before you, and to observe, as well, what my Lords the Bishops are not prosecuted for, as what they are. And first, My Lords are not prosecuted as Bishops, much less are they prosecuted for any Matter of Religion; but they are prosecuted for a

a Temporal Crime, as having injur'd and affronted the King to his very Face. In the next place, they are not prosecuted for a *Nonfeasance*, or omitting to do any Thing; but as they are Actors, for censuring his Majesty and his Government. Now, by Law, no Man is allow'd to accuse, even the most inferiour Magistrate, of any Misbehaviour in his Office, unless it be in a Legal Course, though the Fact be true. No Man may say of a Justice of Peace, to his Face, that he is unjust in his Office: Or to a Judge, either by Word or Petition, *You have given an Unjust or an Ill Judgment, and I will not obey it; it is against the Rules and Law of the Kingdom, or the like.* Least of all, may any Man say any such Thing of the King; for these Things tend to possess the People that the Government is ill administred. Then he proceeded to shew the Nature and Course of the Evidence; and the Declaration of the 4th of *April*, 1687. was deliver'd into Court, under the great Seal.

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The Declaration of the 27th of *April*, 1688, was deliver'd into Court also, under the Great Seal.

Mr. *Gantlit*, Register to the Council, was sworn, and read the Order of Council for reading the Declaration out of the Council Book, and the Book was deliver'd into Court.

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The Declarations under the broad Seal, produc'd.

Mr. *Bridgman* was sworn, and it was demanded of him, If the two Declarations were Printed? to which he answer'd, That they were both Printed by the King's Order.

Sir *Rob. Sawyer*. Did you ever compare the Print, with that under Seal?

Mr. *Bridgman*. I did not compare them.

Sol. Gen. Do you believe it to be the same?

Mr. *Bridgman*. Yes I do believe it.

Sir *Rob. Sawyer*. That is no Proof.

L. C. J. It's well enough; but you'll have Time to make your Objections by and by.

Just. *Allybone*. They have laid that it was Printed by the King's Order; and it is such a Matter as you may clear, if you will, sure, Mr. *Sollicitor*.

Then Mr. *Hills* the Printer, and *Graham*,
were Sworn.

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Sir *Rob. Sawyer*. Did you examin these Decla-
rations with the Original, after they were Printed?

Mr. *Hills*. I did not, but here's Mr. *Williams*
did.

Williams was Sworn.

Sir *Rob. Sawyer*. Did you examine them with the
Declarations under the Great Seal?

Williams. The first Declaration I did; the other
I did not.

Mr. *Finch*. Was it under Seal?

Mr. *Bridgman*. It was the Original sign'd by
the King, but not under the Great Seal.

Sir *Rob. Sawyer*. But it cught to be compar'd
with the Original, or it is not good Proof. You
have made it part of your Information, and you
must prove it.

L. C. J. I think there's Proof enough of that;
there needs no such Nicety.

Mr. *Pollexfen*. Well, my Lord, we must sub-
mit. Let them go on, we wont stand upon this.

Then the Petition sign'd by the Bishop, was de-
liver'd into Court by Sir *John Nicholas*, who de-
posed, he had it from the King's own Hand.

Att. Gen. I suppose my Lords, the Bishops
will not put us to prove it, they will own their
Hands.

L. C. J. Yes Mr. *Attorney*, their Council will
put you to prove it, I perceive your best Way
is to ask nothing of them.

Then Sir *Thomas Exton* depos'd, That he belie-
ved the Body of the Petition to be the Arch-Bi-
shop's Writing, as also, the Arch-Bishop's Name
which was subscribed to it.

Mr. *Brooks* was Sworn, and depos'd, That he
knew the Arch-Bishop's Hand, and he believed the
Name subscribed to the Petition was his Hand, as
also the Petition itself.

He deposed further, That he had seen the Bi-
shop of St. *Asaph's* Hand Writing, and believed
the Name subscribed to the Petition was his Hand.

He deposed also, That he had seen a Letter from
the Bishop of *Ely* to the Bishop of *Oxford*, which
the

Objected, that
it was not
prov'd, that
the Printed
Declarations
was the same
with the Ori-
ginal.

The Petition
sign'd by the
Bishops, pro-
duc'd.

Page 763.
The Bishops
Hands at-
tempted to be
prov'd.

the Bishop of *Ely* own'd he had sent; and he believed the Name here subscribed, to be the Bishop of *Ely's* Hand, because it was like the Hand that Letter was wrote in: But that was not admitted as Proof of the Bishop of *Ely's* Hand.

Mr. *Chetwood* and Mr. *Smith* was Sworn.

It was demanded of Mr. *Chetwood*, if he knew my Lord *Ely's* Hand Writing, to which he answered, he had never seen him write.

L. C. J. Pray bring some other Proof if you have it. Page 764.

Bishop of *Peterborough*. My Lord, We are here as Criminals before your Lordship, and we are prosecuted with great Zeal; I beg your Lordship, you will not be of Council against us, to direct 'em what Evidence they shall give. Bishop of *Peterborough* mistakes my Lord Chief Justice, and casts a Reflection upon him.

L. C. J. My Lord, I hope I have not behav'd my self otherwise hitherto than as becomes me: I was saying this (and I thought I said it for your Lordship's Advantage) that this was not sufficient Proof; and I think if your Lordship observ'd what I said, it was for you and not against you.

Bishop of *Peterborough*. It was to direct them against us, how they should give Evidence.

Mr. *Serj. Pemberton*. Pray, my Lord of *Peterborough*, sit down; you'll have no Wrong done you.

L. C. J. We are not us'd to be so serv'd, and I will not be us'd so.

Att. Gen. Mr. *Chetwood*, do you believe that Name to be my Lord *Ely's* Hand-Writing?

Chetwood. I believe it is. I have formerly seen a Hand said to be his, but have no such Certainty as to Swear positively it was his.

Sol. We will go on to other Proofs, and if we want better Evidence at the End, we will argue with them.

Mr. *Smith* deposed, He had formerly seen my Lord *Ely's* Hand-Writing, and he believ'd the Hand subscrib'd to be his.

Mr. *Middleton* was Sworn.

He deposed, That he had seen my Lord Arch-Bishop's Hand-Writing, and he believ'd the Hand subscrib'd to be his. The same he deposed as to my Lord *Ely's* Hand.

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Sir *Thomas Pinfold* was call'd and Sworn, as to my Lord *Peterborough's* Hand; but he said, he had never seen his Writing but once, and could not be positive.

Mr. *Clavel* was Sworn.

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He depos'd, That he knew my Lord Bishop of *Peterborough's* Hand, and believ'd this to be his: He never saw him write indeed, but had receiv'd several Letters from him about Business, and from his Secretary too.

Mr. *Chetwood* being call'd again, and ask'd whether he knew the Hand shown him to be the Bishop of *Bath* and *Wells's* Hand, said, he had seen his Hand twice or thrice, it was a considerable Time since, but he believed it might be his.

Mr. *James* was Sworn, And it was demanded of him, if the Hand shown him was the Lord Bishop of *Bristol's*. He deposed, That he had seen my Lord of *Bristol* write several Times, and after much Examining, he believ'd it to be his.

Mr. *Powell* was Sworn, And it was demanded of him, if he knew my Lord Bishop of *Chichester's* Hand-Writing, he said, he believ'd he did; and being ask'd if he believed the Name subscribed to be the Bishop's Writing, he would only say, he believed it was like it; but would not say he believ'd it was his Hand, or was not.

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Sol. My Lord, if these Things be endured, there will be an End of all Testimony, if Witnesses do not answer fairly the Questions that are ask'd them.

Justice *Powell*. Truly to me, for a Man to Swear his Belief in such a Matter, is an extraordinary Thing.

Mr. *Polexfen*. The Question is, Whether Belief in any Case be Evidence?

Sol. If they have a Mind to a Bill of Exceptions upon that Point, let them Seal their Bill; and We'll argue it with them when they will.

Att. Gen. We have given Evidence sufficient, sure, to have the Paper read; therefore, We desire it may be read.

Serj. *Levins*. We pray it may not be read 'till they prove it better, for they have only given Proof

Proof by Comparison of Hands, which in Criminal matters ought not to be receiv'd; and even that Comparison is proved in such an uncertain manner, that it can be no Evidence to Charge us.

Serj. *Pemberton*. My Lord, in every Petty Cause where it depends upon Comparison of Hands, they use to bring some of the Parties Hand-Writing, and compare it in Court with what is endeavoured to be prov'd; and upon comparing them together the Jury may look upon it and see if it be right. And therefore as to this Evidence we say, First, that Comparison of Hands ought not to be given at all in the Cases of Criminals; but if it be admitted to be Evidence, the Usage is, the Witness is first ask'd concerning the writing he produces. Did you see this writ by the Defendant, whose Hand they would prove? And if he says he did, then the Jury, on the Comparison of the Writing the Witness Swears to, with the Paper that is to be proved, judge whether those Hands be so like, as to induce them to believe that the same Person writ both.

L. C. J. I take it, that the Witness himself is Judge of the Comparisons, for if he does know the Party's Hand, and a Paper be offered him to prove it, he is to compare it in his own Mind.

Serj. *Pemberton*. It was never admitted to be so that I know of.

Sol. You may remember several Cases, and particularly *Sidney's*.

Mr. *Pollexfen*. As to *Sidney's Case*, that was in Treason: Now, in the Case of Treason there is always other Evidence brought, and this comes in but to strengthen the other; but in this Case it is the single Evidence, for there is nothing more in the Case for ought appears. But, whether this were their Hands, and prov'd only by what another believes. Now, shall any one be condemned by what another believes without other Proof? Surely my Lord, that was never Evidence yet to convict any Man: So that their Proof fails in both Points. For first, it ought to be considered, Whether Comparison of Hands be Evidence in a Case of Misdemeanour? And if it is admitted to

Similitude of Hands, Whether Proof of a Man's Hand Writing in Criminal Cases.

And if it be, Whether the Witness himself be Judge of the Likeness? Or, Whether some of the Party's Writing ought to be produc'd in Court, for the Jury to judge of it.

Sidney's Case, said not to be parallel to this

to be Evidence, Whether the Belief of a Man that brings nothing to compare with it, or ever saw the Party write, but has receiv'd Letters; and says, this is like it, and therefore he believes it to be his Hand, be good Evidence, as to a Comparison of Hands?

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Sol. They say, proving of Similitude of Hands is no Evidence. When Witnesses are dead, Is it not the most common Practice that can be, to produce Witnesses to prove such Men are dead, whose Names are set as Witnesses to Deeds? And then Swear, they believe it to be the Hand-Writing of those Witnesses?

Mr. Finch. The Evidence that they have given, is of my Lords the Bishops writing this Paper; and they have laid it to be done in *Middlesex*: And this, with Submission to your Lordship, is local, and they must prove it to be written in *Middlesex* where they have laid it, or else they fail in their Proof. This is an Objection which as yet hath not been spoken to. If there be Proof of their Hand-Writing, yet there is no Proof where that Hand was written; and therefore they are not yet got so far as to have it Read against my Lords.

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Just. Powel. I think you have not sufficiently prov'd this Paper to be subscribed by my Lords the Bishops, so as to read it; it is too slender a Proof for such a Case. I grant you, in Civil Actions a slender Proof is sufficient to make out a Man's Hand; by a Letter to a Tradesman, a Correspondent, or the like: But in Criminal Cases, such as this, if such a Proof be allow'd, where is the Safety of any Man's Life!

L. C. J. I think there is Proof enough to have it Read. Say what you will of Criminal Cases, and the Danger of Peoples Lives: There were more Danger to the Government if such Proof were not allow'd to be good.

Just. Allybone was of the same Opinion of my Lord Chief Justice, That it should be Read.

Justice Holloway, and *Justice Powel* were of Opinion, That stronger Proof was required in Criminal Cases, and therefore it ought not to be Read.

L. C. J.

The Court were divided whether the Proof were sufficient, and therefore directed them to bring other Proof of the Bishop's subscribing it.

L. C. J. You must go on to some other Proof, Mr. *Sollicitor*; for the Court is divided in their Opinions about this Proof.

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Sol. Gen. Then, my Lord, we will come to the Confessions of my Lords the Bishops, and I hope that will be believ'd by all Mankind.

Then Mr. *Blathwait* was call'd, and the Petition shewn him.

He deposed, That the 8th of this Month, at *White-hall*, my Lord Arch-Bishop acknowledg'd that his Name, subscribed to that Petition, was his Hand-Writing: And the rest of the Bishops, whose Hands were subscrib'd, did then also respectively acknowledge, that it was subscribed by them.

Mr. *Blathwait* proves they acknowledg'd their Hands before the Council.

Serj. Pemberton. Pray Sir, when they were first ask'd whether that was their Hands or not, What Answer did they give.

Mr. *Blathwait.* Sir, I have begg'd the Favour of my Lords the Judges, to tell me what I am to answer; and what Questions are proper for me to answer to.

L. C. J. You must answer any Questions that are not ensnaring Questions.

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Just. Allybone. Answer to the Questions they ask you.

Mr. *Blathwait.* They said, they did humbly hope, if they were put to answer, no Advantage should be taken against them.

Serj. Pemberton. Sir, by the Oath you have taken, you are to tell the whole Truth.

L. C. J. Is he to tell you all that was done at the Council-Board that Day.

Serj. Pemberton. No my Lord, only what pass'd there about my Lords the Bishops Confession, the whole matter.

Mr. *Blathwait.* I desire the Question may be repeated, that I may know what to answer to.

Serj. Pemberton. What did my Lords the Bishops say, at the Time of their appearing in Council, concerning the King's Pleasure; whether they should answer or not?

Mr. *Blathwait.* The first Time my Lords the Bishops came into the Council, they were ask'd, whether they did own that Paper; they immediately

The Bishop's Council insist, that the Witnesses should declare all that was transacted at the Council, when the Bishops were examin'd.

ately answer'd, They humbly hoped, as they stood there Criminals, His Majesty would not take Advantage against them; but however, they would obey His Majesty's Command: And thereupon, they were commanded to withdraw. The second Time, as near as I can remember, they said the same?

Sir *R. Sawyer*. Were they ask'd whether they publish'd it.

Mr. *Blathwait*. I think they were ask'd the Question, and they deny'd it.

Serj. *Pemberton*. Sir, when they came in the second Time, Did they desire to know if it were His Majesty's Command that they should own it?

L. C. J. That, I must not permit you to ask Brother, that is to lead the Witness.

Att. Gen. I oppose the asking this Question: Not but that every Man has a Right to cross Examine a Witness; but if they ask such a Question, let them tell us what Use they would make of it.

Serj. *Pemberton*. I will tell you what Use we intend to make of our Question. If they answer'd under a Promise from His Majesty, that it should not be given in Evidence against them; I hope they shall not take Advantage of it.

Sol. Gen. That is a very unmannerly Question, it is to put something upon the King, which I dare hardly Name: And if Men will be so pressing, I, for the King, desire the Question may be enter'd.

Serj. *Pemberton*. Record what you will, I am not afraid of you Mr. *Solicitor*.

Att. Gen. Mr. *Blathwait*, Answer whether there was any Promise made to my Lords the Bishops from the King.

Mr. *Blathwait*. My Lord, I take the Question to be, Whether the King was pleased to make my Lords the Bishops any Promise of not taking Advantage of what Answer they made: And as that Question is stated, there was none such made. It was the third Time they came in, that they own'd it. My Lord Chancellor requir'd them to answer, whether they own'd that Paper or no; and having pray'd the King, that no Advantage should

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Particularly, if the King promis'd them their Acknowledgment should not be made use of to their Prejudice.

Blathwait deposes, the King made no such Promise.

should be taken against them, for what they should say, they own'd it. And his Grace the Archbishop said (as to Publishing it) That it was Written with his own Hand, and that he had not made use of his Clerk.

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Att. Gen. I must ask you, for the King's Honour, Mr. *Blathwait*, Did the King make any Promise or Declaration, that no Advantage should be taken, or Use made of it?

Mr. Blathwait. The King did not make any Promise or Declaration, that no Advantage should be taken, or Use made of it.

Sol. Gen. We pray now that it may be Read?

Mr. Finch. I think it cannot be Read, and my Objection is this, The Writing and Contriving must be prov'd to be in *Middlesex*, as well as the Publication, for all is local.

Objects, That the Writing or Framing, was not prov'd to be in the County where the Offence is laid.

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Serj. Levins. Their Information is, That they did Consult and Contrive to diminish the King's Prerogative, at *Westminster*, in the County of *Middlesex*. And there they did Write, and cause to be Written, this Libel, and there they did Publish it. Suppose it should be granted, that this is the Archbishops Hand-Writing, and these are their Names to it; is there any Evidence that this was done in *Middlesex*?

Mr. Sommers. All Matters of Crime are so local, that if it be not prov'd to be done in the County where it is laid, the Party accus'd, is as Innocent, as if he never had done the Thing. And, with Submission, it is the very Point of the Information, That it be prov'd they are Guilty of the Fact, in the Place where it is laid to be done.

All Matters of Crime are local, and the Party is to be acquitted, if it be not prov'd to be done in the County where 'tis laid.

Att. Gen. My Lord, When this Paper is Read, which we pray it may be, we will answer their Objections; but at present, we say, they are out of Time.

L. C. J. Truly I am of the same Opinion, that it is too soon to make the Objections, and that the Paper ought to be Read.

Mr. Pollexfen. My Lord, If the Objection be saved to us, we shall not so much oppose the Reading of it; only we would not be surpriz'd in Point of Time.

The Petition is read.

Then the Petition was Read.

Att. Gen.

Att. Gen. My Lord, We shall leave our Evidence here, and hear what they can object to it.
The Jury desired to see the Petition, and it was shewn them.

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Objects, That there is no Proof of the Publishing of it.

L. C. J. What say you for the Defendants, Gentlemen?

Mr. Finch. My Lord, In short, we say, That hitherto they have totally fail'd, for they have not prov'd any Fact done by us in *Middlesex*, nor have they prov'd any Publication at all.

L. C. J. You hear what *Mr. Blathwait* says, that they own'd it in *Middlesex*.

Mr. Finch. That is not a Publication sure, or any Evidence where it was done.

Objects, That but part of the Petition is incerted in the Information.

Serj. Levins. My Lord, In the first Place, we insist upon it, Here is no Proof of the Fact being done in the County of *Middlesex*. And in the next Place, This Information and Petition do not agree: For they have brought an Information, and set forth, *That my Lords the Bishops, under pretence of a Petition, did make a Libel*; and they have set forth no Petition at all; all the Petitionary Part is omitted.

Sir Rob. Sawyer. The Truth of it is: This Information has made a very deformed Thing of it, has left it neither Head nor Tail. They stile it a *Petition*, but it is without any Direction to any Body, and without any Prayer for any Thing. There may be more in the Paper, than in the Information; and if all were in, one Part might explain another.

Sol. Gen. I wonder to hear that Objection from *Sir Robert Sawyer*, who has exhibited so many Informations for Libels, in pieces taken out of Books.

Answer, It is not necessary to incert the whole.

Att. Gen. Is there any Thing more frequent, than only to recite the material Part? Surely they may say, in such a Libel is contain'd so and so, without setting forth the whole Book. They tell us, we have set forth a Petition. We say no such Thing. In the Information we say, you compos'd a certain Libel *pretensu Petitionis*, in which are contain'd such and such Things.

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Sol. Gen.

Sol. Gen. Take the Information as we have laid it, and, I believe, there are Twenty Precedents of late Days. So was the Information against *Baxter*, so was the Information against *Johnson*, against *Dr. Eades*, and against *Sir Samuel Bernardiston*, they are all in this Form, *sic continetur*. But they say we do not set out the Petition. We say it is a Libel, and it is not the Name we rely on; but there is such a Libel, so we in our Information call it. If it be not a Libel, then are they very Innocent; but if it be as we say, then it is not the speaking ill Things in the Body of a Petition, and then giving it a good Title, and concluding it with a good Prayer, will sweeten this Crime, nor alter or alleviate it at all. We say, a Libel is made *pretensu Petitionis*, call it what you will; and that these Things are a Libel upon the King and Government.

As to the other Objection that is made, That here is no Evidence of a Publication; my Lord, I take it to be a Publication in it self. Is it possible for a Man to write a Libel, to set his Name, and part with it; and it shall come to the King's Hands, and this not be deem'd a Publication?

Att. Gen. They bid us make out where this Libel was Written or Compos'd. Put the Case, a Man is found in *Middlesex* with a Treasonable Paper in his Pocket, and the Man is Indicted here in *Middlesex*, for Framing and Composing such a Treasonable Libel, shall he be admitted to say, Pray prove where I made and compos'd it, for though you found it in my Pocket, yet I might do it in the County of *York*? This had been a very good Defence for *Mr. Sidney*, who was Indicted, Convicted, and Attainted for a Treasonable Paper found in his Study, if this Doctrine were true; but then the King would be in a very woful Case. Here is a Paper that is found in the County of *Middlesex*, and this is there own'd by you, to be Written and Subscribed by you. Pray do you prove that it was Written elsewhere?

Serj. Pemberton. We will do it for once: We will prove that my Lord Archbishop was not out of

of *Lambeth-House* in two Months, before the Petition was deliver'd.

Then Mr. *Nichols* was Sworn.

The Archbi-
shop prov'd to
be at *Lambeth*
when the Pe-
tition was
drawn.

He depos'd, That my Lord of *Canterbury* did not stir out of *Lambeth* from *Michaelmas* last, till the Time he was before the Council.

Mr. *Finch*. This is *ex abundanti*; for in Point of Law, it is incumbent upon them to prove where it was done. And as to the second Part, the *Publication*, there is not a tittle of Proof offer'd, but only the owning their Hands upon their Examination at the Council; and no Man did ever yet think that the answering a Question, and owning a Paper at the Council Table, upon a Question put by the King himself, was a Publication of a Libel.

Sending a Let-
ter by the
Post, adjudg'd
the Publicati-
on of a Libel.

Sol. Gen. If the Paper is Libellous, where-ever it is found, that is a Publication. These Gentlemen fancy, that unless there was a publick Delivery of this Paper abroad, nothing can be a Publication. But I rely upon it, their setting their Names to it, made it their Paper; and where-ever it went, that was a Publication of it. There is the Case of *Williams* made use of by Mr. *Finch* in *Sidney's* Tryal, who wrote a Treasonable Letter, Seal'd it up, and sent it to the King. And there is Sir *Baptist Hicks's* Case, and my Lady *Hattons*; there was only a Letter sealed up, and deliver'd to the Party.

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Mr. *Recorder*. Suppose a Man, write a scandalous Letter from *London*, to a Judge at *Exeter*, and sends it by the Post, and the Letter is receiv'd from the Post at *Exeter*, and open'd; Would any Man make a Question, whether the Gentleman that sent the Letter, may not be Indicted and Prosecuted for a Libel at *Exeter*, where the Libel was receiv'd?

Just. *Powell*. There's no Question of that, but that comes not home to our Case.

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Sol. Gen. The Publication, we say, was here in *Middlesex*, and of that there is a clear Evidence; because it was found there, and came from the King's Hand, to whom it was directed; and it could

could not come to the King's Hand, out of their Custody, without their Consent.

Serj. *Levins*. My Lord, The Cases that have been Cited, are all Law, but not one Tittle to this purpose. In Sir *Baptist Hicks's* Case, and *Williams's* Case, it was prov'd, *They all sent them to the Places whither they were directed*. But is there a Tittle of Proof that the Bishops sent it here? And for *Sidney's* Case, there was Treason in the very Libel and Book that he made; and he was not Indicted for Publishing, but for Treason in the Place where it was found, because it was found in his Possession. But was this ever in my Lord Archbishop's Possession in *Middlesex*, or the rest of the Bishops, and were they Publishing of it? If it had, then it had been their Act clearly. But that is the Thing wherein they are defective: They do not prove that my Lords the Bishops sent or brought it here. But upon the Question ask'd them by the King, they acknowledg'd it to be their Hands. So that there is no Proof of a Fact done *here*, but an acknowledgment of a Fact done, no body knows where.

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The owning
their Hands
before the
Council, not
to be deem'd
a Publication.

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Mr. *Pollexfen*. It cannot be a Crime to answer a Question put by Authority, for it is the Duty of all Men to answer, when examin'd by lawful Authority. If a Man comes before a Magistrate, and confesses any Thing, that is Evidence indeed, but it is not a Crime. For there is a great deal of difference between Evidence and the Crime: But that this should be both Evidence and a Crime too, is a strange Construction. And for the other Part, the Writing it, I suppose the Court is satisfied it was in another County.

Confession
maybe Evidence
of a Crime,
but it is not a
Crime it self.

Sir *George Treby*. The Evidence they have offer'd to prove the Publishing it, is a Confession. This Confession is testified by Mr. *Blathwait*, who says, the Bishops were ask'd at the Council, Whether they did Subscribe and Publish this Paper? And that there Answer was, That they did *Subscribe*, but not *Publish* it. Now a Confession must be taken together, and must be admitted to be *entirely* True by them that produce it: They shall never be allow'd to take out, and use one piece, and wave the

rest. So that the King's Council have plainly prov'd, that the Bishops did not publish this Paper; and yet this is the only Evidence, upon which they would infer, that they did Publish it.

L. C. J. It lies upon the King's Council to prove, that my Lords the Bishops did cause it to be published; for their owning their Hands, does not amount to a Publication.

Mr. Blathwait was call'd again.

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Att. Gen. Pray consider, *Mr. Blathwait*, What was the Question put to my Lords the Bishops, at the Council Table?

Mr. Blathwait. They were ask'd, Whether that was the Paper that they deliver'd to the King? They scrupled to answer the first and second Time; but they did, at last, own it was the Petition they presented to the King, to the best of my Remembrance. I do not exactly recollect the Words.

Serj. Pemberton. Sir, I desire to ask you, Whether the Question that was put to my Lords the Bishops, at that Time, was, Whether this was the Paper they deliver'd to the King? or, Whether those were their Hands that were to it?

Mr. Blathwait. I did always think that it was a plain Case, that that was the Paper that they deliver'd to the King; and my Lords the Bishops did never deny, but that they gave it to the King; and I had it from the King's Hands.

L. C. J. But we must know from you (if you can tell us,) What the Question was that was put to my Lords the Bishops. Were they ask'd, Whether those were their Hands that were to that Paper? Or was it, Whether they deliver'd that Paper to the King?

Mr. Blathwait. As to the first Part, That they own'd it was their Hands, that I am sure of; but as to the other, I do not remember what the Words were.

At which there was a great Shout.

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Att. Gen. Do you remember the King said any Thing of the Paper being deliver'd to him?

Mr. Blathwait. The King has said it several Times; I believe I have heard him say it ten Times at least, but I cannot positively say he said it then.

Mr.

Mr. *Bridgman* appear'd again.

Sol. Gen. Pray consider, Was there any Discourse concerning the Paper, Whether it was deliver'd to the King or no?

Mr. *Bridgman*. I know not by whom it was said; but that Question, or to that purpose, was ask'd, *Whether that was the Petition they deliver'd?* but I do not remember, whether the Question was directly ask'd or answer'd.

Sol. Gen. In your Apprehension, Did they own that they deliver'd that Paper?

L. C. J. That is not a fair Question, to ask what he apprehended: His Apprehensions are no Evidence.

Sol. Gen. Was it upon the first, or second Time of their being examin'd?

Mr. *Bridgman*. It was not the first Time, I believe; for at the first, my Lords the Bishops made some scruple of answering or owning any Thing: And whatever they own'd, they said, they hop'd it should not be made use of to their Prejudice. I remember no Reply that was made, nor any Thing farther, only my Lord Chancellour said, They were not to Capitulate with their Prince; but they were requir'd to answer the Questions that were ask'd them.

Sir *John Nicholas* appear'd again.

Sol. Gen. Did you observe any Questions that were ask'd the Bishops, either by the King, or my Lord Chancellour?

Sir *J. Nicholas*. I think my Lord Chancellour did ask them, If that was their Hands to the Petition, and they own'd it?

L. C. J. Did my Lord Chancellour ask them this Question? Is this the Petition you deliver'd to the King?

Sir *J. Nicholas*. I do not remember that.

Then there was a great Shout.

Sol. Gen. Here's wonderful great Rejoicing that Truth can't prevail.

Mr. *Pepys* was Sworn.

L. C. J. What were the Questions that were ask'd my Lords the Bishops at the Council Board, either by the King, or my Lord Chancellour?

Page 788.

The Witnesses could not prove that the Bishops own'd that this was the Paper they deliver'd to the King.

Whereupon the People shout.

Mr. *Pepys*. I think the very Words of the Question were, *My Lords, Do you own this Paper?* I do not remember any Thing was spoken about the Delivering; but I believe it was understood by every Body at the Table, that that was the Paper that they had deliver'd.

Mr. *Musgrave* was Sworn.

He depos'd, That the Bishops being call'd in, and ask'd, If they own'd that Paper, or if it was their Hands? declin'd answering at first. But that being call'd in a second time, the Lord Archbishop said they would rely upon his Majesty; and then they did all own that it was their Hands.

Page 789.

L. C. J. Was there any Question to this purpose? *Is this the Paper you deliver'd to the King?*

Mr. *Musgrave*. I do not remember that ever any such direct Question was ask'd.

Whether the owning the Paper were not a Publication?

Just. *Allybone*. Mr. *Pepys* did say that they did own the Paper; and, upon my Word, that will look very much like a Publication.

After Mr. *Attorney* and Mr. *Solicitor* had repeated some of those Observations they had made upon the Evidence before, my Lord Chief Justice began to sum it up, and direct the Jury.

Page 790.
Mr. *Finch* interrupts the Chief Justice, as he is directing the Jury.

Mr. *Finch*. I ask your Pardon, my Lord, for breaking in upon you, when you are directing the Jury. I would only say this, my Lord, Whether this be Evidence or no?

L. C. J. I am sorry you have that Opinion of me, Mr. *Finch*, as to think I should not leave it fairly to the Jury.

Mr. *Finch*. I only speak it, my Lord, because if it be Evidence, we have other Matters to offer in Answer to that Evidence, and in our own Defence.

L. C. J. If you had more to offer, Why did you conclude here, and let me begin to direct the Jury? But since you say you have other Matter to offer, we will hear it.

Serj. *Levins*. We beseech your Lordship to go on with your Directions.

Mr. *Finch*. My Lord, I beg your Pardon for interrupting you: All that I was going to say, would have amounted to no more than this, That there

there being no Evidence against us, we must of Course be acquitted.

Just. Holloway. My Lord did intend to have said as much as that, I dare say.

L. C. J. Well, Gentlemen of the Jury, we have had Interruption enough.

Sol. Gen. My Lord, I must beg your Pardon for interrupting you now, and I am very glad these Gentlemen have given us this Occasion, because we shall now be able to clear this Point. There is a Fatality in some Causes, my Lord, and so there is in this. We must beg your Patience for a very little while, for we have Notice, that a Person of very great Quality is coming, that will make it appear, that they made their Addresses to him that they might deliver it to the King.

L. C. J. Well, You see what comes of Interruption, Gentlemen: Now we must stay.

Then there was a great Pause.

Serj. Pemberton. My Lord, This is very unusual, to stay thus for Evidence.

L. C. J. It is so; but I am sure you ought not to have any Favour. But, Mr. Solicitor, we have staid a great while, it is fit we should have an Oath made that the Witness is coming.

Then the Cryer depos'd, That Mr. Graham went for my Lord *Sunderland*, and he was coming. And after a considerable Pause, my Lord President came, and was sworn.

My Lord President depos'd, That before my Lords the Bishops appear'd in Council, the Bishops of St. *Asaph* and *Chichester* came to his Office, to let him know, that they came in the Name of the Archbishop, and four other of their Brethren, viz. The Bishops of *Ely*, *Bath* and *Wells*, *Bristol*, and *Peterborough*, with a Petition to deliver to the King, if he would give them Leave: And they desir'd of my Lord President, to know which was the best way to do it? That he told them, he would know the King's Pleasure, and bring them Word again. That they offer'd him their Petition to Read, but he refused to read it, and went immediately to his Majesty, and acquainted him with it: And the King commanded him to let them

The Court wait for my Lord *Sunderland*, to give Evidence.
Page 791.

Oath made he was coming.

Lord *Sunderland*'s Evidence of the Bishops applying to him for an Opportunity to deliver their Petition to the King.

them know they might come when they would; which he acquainted them with, and they went for their Brethren, and attended His Majesty with their Petition, in about an Hours Time; but he was not in the Room when it was deliver'd to the King.

Page 792.
The Court
incline to
think this a-
mounted to a
Publication.

L. C. J. Truly there was a great Presumption before, but there is a greater now; and I think I shall leave it with some Effect to the Jury, I cannot see but here is enough to put the Proof upon you: I think this is sufficient Evidence of the Publication.

Mr. Pollexfen. The Arch-Bishop was not there, and so there is no Evidence against him: And for the other Six Lords, my Lord President does not say, that this is the Petition that they said they had to deliver to the King; nor did he see them deliver it.

Att. Gen. Then we leave it fairly to the Jury upon this Fact.

The Defence
begun by Sir
Robert Sawyer.

Mr. Pollexfen. If so then, We desire to be heard in our Defence.

He recites the
Substance of
the Charge.

Sir Rob. Sawyer. May it please your Lordship, and you Gentlemen of the Jury, You have heard the Charge, which *Mr. Attourney* has been pleased to make against my Lords the Bishops, *viz.* That they did conspire to diminish the Royal Authority, and Regal Prerogative Power and Government of the King; and to avoid the Order of Council: And, in Prosecution of this, They did *falsly, maliciously, and seditiously* make a Libel against the King, under Pretence of a Petition; and did publish the same in the King's Presence.

'Tis the Sub-
jects Right to
Address the
King, if he
conceives he is
commanded
to do a Thing
that is con-
trary to Law.

Now, as to the Falsity of it, and that it was malicious and seditious are all matters of Fact; which, with Submission, they have offered no Proof of to the Jury, and I make no Question to demonstrate the quite contrary: For I think it can be no Question, but that any Subject that is commanded by the King, to do a Thing which he conceives to be against Law, and against his Conscience, may humbly apply himself to the King, and tell him the Reason why he does not that Thing he is commanded to do; and why he cannot concur with His Majesty in such a Command. *Mr.*

Mr. *Attorney General* did insist, that my Lords were not sued as Bishops, or for their Religion; and that it was not for any *Non Feazance*, but for a *Feazance*. But, I conceive it was for an Act they did, and might lawfully do as Bishops, with Relation to their Ecclesiastical Polity. It is true, it is for a *Feazance* in making of the Petition; but it was to excuse a *Non Feazance*, the not Reading according to Order: And this, sure, was lawful for all the Bishops, as Subjects, to do. And the Petition does not meddle with any matter of State, but refers to an Ecclesiastical Matter to be executed by the Clergy: So, that they were not Busy-Bodies, or such as did not meddle with Matters that did not relate to them; but that which was properly within their Sphere and Jurisdiction.

States the Case for the Defendants, and explains what the Bishops were prosecuted for
Page 793.

That they meddled but with such Things as concerned them.

That Mr. *Attorney* should load it with such horrid black Epithets, that it was done libellously, maliciously, and scandalously, and to oppose the King and Government is very hard; and I believe my Lords the Bishops, cannot but conceive a great deal of Trouble that they should lie under so heavy a Charge; and that Mr. *Attorney* should draw so severe an Information against him, when he has so little Proof to make it out.

And did not deserve the Epithets in the Information.

The main Clause in the Declaration, at which my Lords the Bishops scrupled, is this.

Page 794.

“ We do likewise declare, It is Our Royal Will
“ and Pleasure, that from henceforth the Execution of all, and all manner of Penal Laws,
“ in Matters Ecclesiastical; for not coming to Church, or not receiving the Sacrament, or
“ for any other Non-Conformity to the Religion established; or for, or by Reason of the Exercise of Religion, in any Manner whatsoever,
“ be immediately suspended: And the further Execution of the said Penal Laws, and every of
“ them, is hereby suspended.

The Dispensing Clause.

L. C. J. [*Aside.*] I must not suffer this, they intend to dispute the King's Power of suspending Laws.

Just. Powel. My Lord, they must necessarily fall upon that Point, for if the King has no such Power, (as he hath not in my Judgment) the natural

tural Consequence will be, that this Petition is no Diminution of the King's Regal Power ; and so not seditious or libellous.

L. C. J. Brother, I know you are full of that Doctrine ; but however, my Lords the Bishops shall have no Occasion to say that I deny to hear their Council, Brother, you shall have your Will for once, I will hear them ; let them talk till they are weary.

Just. Powel. I desire no greater Liberty to be granted them, than what in Justice the Court ought to grant ; that is, to hear them in Defence of their Clients.

Now my Lord, this Clause is of some legal Effect or Signification, or it is not. If the King's Council say it is of no Effect in Law, then there is no Harm done ; then this Petition does no way impeach the King's Prerogative, in saying it has been declar'd in Parliament, according as the King's Council do agree the Law to be. But my Lord, if it have any Effect in Law, and these Laws are suspended, by Virtue of this Clause in the Declaration, then certainly, it is of the most dismal Consequence that can be thought of : And it behov'd my Lords the Bishops, who are Fathers of the Church, humbly to represent it to the King.

For my Lord, by this Declaration, and particularly by that Clause in it, not only the Laws of our *Reformation*, but all the Laws for the Preservation of the *Christian Religion* in general, are suspended, and become of no Force, if there be such an Effect in Law, wrought by this Declaration, as is pretended : That is, *That the Obligation of Obedience to them ceaseth*. The Reason of it is plain, and the Words cannot admit of such a Quibble, as to pretend that the suspending the Execution of the Law, is not a Suspending of the Law ; for we all know the End of every Law in its primary Intent, is Obedience to it : That of Penalty, comes in by way of Punishment and Recompence for their Disobedience.

Now my Lord, if this Declaration does discharge the King's Subjects from their Obedience to, and Obligation from those Laws ; then all the
Laws

Laws of the Reformation are suspended, and the Laws of Christianity itself, by those latter Words *Or for, or by Reason of Religion, in any Manner whatsoever.* So, that it is not confin'd to the Christian Religion, but all other Religions are permitted under this Clause; and thus all our Laws for keeping the *Sabbath*, and which distinguish us from Heathens, will be suspended too: (And, what a Mischief that will be to the Church which is under the Care of my Lords the Bishops, your Lordships will easily apprehend.) These Things, my Lord, I only mention, to shew the great and evil Consequences that apparently follow upon such a Declaration; which made my Lords the Bishops decline obeying the Order, and put them under a Necessity of applying thus to the King.

The Necessity the Bishops were under of petitioning the King.

Then, my Lord, I come to shew, that these Noble Lords are no Busy-Bodies, but have done their Duty in this Matter; and meddled with their own Affairs: They are frequently in our Books call'd the King's *Spiritual Judges*, they are intrusted with the Care of Souls, and the Superintendancy over all the Clergy is their principal Care.

The Affairs of Religion under their peculiar Care

But besides this, there is another special Care put upon them by Act of Parliament; for by Virtue of their Offices as Bishops, the Act of the 1 *Eliz. c. 2.* makes them special Guardians of the Law of Uniformity, and of that other Law in His late Majesty's Reign, where all the Clauses of that Statute of 1 *Eliz.* are reviv'd; and made applicable to the present State of the *Church of England.* Now, in that Statute of 1 *Eliz.* "The Queen, Lords, and Commons, Require, and Charge all Arch-Bishops, and Bishops, that the Laws relating to Religion, be duly executed in their Diocesses, according to that Statute; as they will answer before God, for such Evils and Plagues as Almighty God may justly punish his People with, for neglecting that good and wholsom Law.

The Act of Uniformity lays a Curse upon them, if they neglect to see the Laws put in Execution.

Page 795.

So that by this Law it is plain, that my Lords the Bishops, upon Pain of bringing upon themselves the Imprecation in this Act of Parliament, are oblig'd to see it executed: And then my Lord, when any thing comes under their Knowledge, (especially

And they could not be Actors, in promulging the Declaration for a Dispensation.

ally if they are to be Actors in it,) that has such a Tendency in it, to destroy the very Foundations of the Church; as the Suspension of all Laws that related to the Church must do: It concerns them that have no other Remedy, to Address the King, by Petition, about it.

Page 796.
The legislative Power, that makes the Law, only can suspend it.

Mr. *Finch* spoke to the same Effect, and then went on: Now, my Lord, I have always taken it, that a Power to abrogate Laws, is as much a Part of the Legislature, as a Power to make Laws: A Power to lay Laws asleep, and to suspend Laws, is equal to a Power to abrogate them: For, they are no longer in Being, as Laws, while they are so laid asleep or suspended. Then if this Declaration be founded upon a Part of the Legislature, which must by all Men be acknowleg'd not to reside in the King alone, but in the King's Lords and Commons; it cannot be a legal and true Power or Prerogative.

The Dispensing Power never claim'd, 'till the Reign of K. *Charles* the 2d.

This was not attempted 'till the last King's Time: It was never pretended to 'till then, and in that first Attempt it was so far from being acknowledged, that it was taken Notice of in Parliament, and declared against.

In the Year 62, when there was but the least Umbrage given of such a dispensing Power, altho' the King had declared, in his Speech to the Parliament, that he wish'd he had such a Power; which his Declaration before seem'd to assume: The Parliament was so jealous of this, that they immediately made their Application to His Majesty, by an Address against the Declaration; and they give Reasons against it in their Address: One in particular was, *That the King could not dispense with those Laws without a Parliament.*

And on an Address from the Parliament, the King cancelled his Declaration for dispensing with the Laws, and declar'd it should never be drawn into Example.

There was another Attempt in 1672, and then, after His Majesty had in his Speech mentioned his Declaration to them, the Parliament, particularly the *House of Commons*, did humbly Address His Majesty, setting forth, that this could not be done by Law, without an Act of Parliament: And His Majesty was pleased so far to concur with them in that Opinion, that he cancelled his Declaration, tore off the Seal; and caus'd it to be made known to

to the House of Lords, by the Lord Chancellour, that His Majesty had broken the Seal, and cancelled the Declaration; with this further Declaration, which is enter'd in the Records of the House, *That it should never be drawn into Example or Consequence.*

Now, my Lords, the Bishops lying under a Command to publish the Declaration recited in the Information; it was their Duty, as Peers of the Realm, and Bishops of the *Church of England*, humbly to apply themselves to His Majesty; to make known the Reasons why they could not obey that Command, *viz.* That the Declaration being founded upon that which the Parliament had declared to be illegal, it could not warrant their Concurrence in the Distribution and Publication of it. And this they did by an humble Petition, with all the Decency and Respect that could be shewn; asking Leave first to approach his Person: And having Leave, they offer'd my Lord President the Matter of their Petition, that nothing might seem hard or disrespectful; or as if they intended any thing that was not fit to be avow'd. When they had taken all this Care in their Approach, they come secretly to the King, in private, when he was all alone; and there they humbly present this Petition to His Majesty. Now, how this can be call'd the Publication of a malicious, seditious Libel; when it was but the presenting a Petition to the King, alone: And, how it can be said, to be with an Intent to stir up Sedition in the People, against His Majesty, and to alienate the Hearts of the People from him; when it was in this private Manner, delivered to him himself only, I cannot apprehend.

Mr. *Pollexfen* and Mr. Serj. *Pemberton* insisted on the same Points, and affirm'd, that the Kings of *England* had no Power to suspend, or dispense with the Laws: And, that it was no Crime to petition the King, or to inform him if he was mistaken in the Law. That it was allow'd daily in *Westminster-Hall*, to argue against the King's Grants, and say, he was deceived in his Grants. That the Laws for Uniformity, were made upon a Fore-

Page 797,

That the presenting a Petition in that humble and decent Manner, cou'd not be construed publishing a seditious Libel.

Page 798.

That it was allowable to say the King is mistaken in the Law, and was the daily Practice, in Relation to his Grants.

Serj. Pember-
ton stiles Pope-
ry the worst
of all Religi-
ons.

The Council
for the Bi-
shops, pro-
duce their E-
vidence.

Page 799.
The Record,
impowering
K. Richard 2d
to dispense
with the Sta-
tute of Pro-
visors, Read.

Page 800,

The Journal-
Book of the
House of Lords,
produc'd.

a Foresight of the Mischiefs that might come by false Religions in this Kingdom; and particularly to keep out the *Romish* Religion, (*which was the very worst of all Religions*) from prevailing amongst us: And that this was the very Design of the Acts for the Tests, which is entitled, *An Act to prevent Dangers that may happen from Popish Recusants*. And, that if the King might suspend the Laws of the Land, which concern Religion; they know no other Law but he might suspend: And then how precarious the Lives, Liberties and Properties of the Subjects would be, ought to be considered.

Then, Mr. *William Fisher* was Sworn.

And a Copy of the Records, which gives King *Richard 2d* a Power to dispense with the Statute of the Provisors, was shewn him. He depos'd, That he had examin'd the Copy, with the Records in the *Tower*; and it was a true Copy.

The Record being in *French*, Mr. *Halstead*, the Clerk of the Records in the *Tower*, was Sworn, truly to render it into *English*.

“ By this Record it appears, that a Power was
“ given by the *Commons* to the King, That he with
“ the Assent of the Lords, might dispense with
“ the Statute of Provisors, 'till the next Parlia-
“ ment, with a Power reserv'd to the *Commons*,
“ to disagree to, and retract that Consent of
“ theirs the next Parliament; if they thought
“ fit: And they protest, that this Assent, which
“ was a Novelty, and had not been done before
“ that Time, should not be drawn into Example
“ or Consequence, for Time to come: And
“ they prayed the King, that their Protestation
“ might be entered of Record, in the Roll of
“ Parliament: And the King granted, and com-
“ manded to do it.

Sir *George Treby* observ'd thereupon, That the Statute of Provisors thus Dispensed with, was a penal Law, and concern'd *Ecclesiastical Affairs*, viz. The Collating and Presenting to Arch-Bishopricks, Bishopricks, Benefices, and Dignities of the Church.

Then the Journal-Book of the *House of Lords* was produc'd, and Mr. *Walker* was Sworn; and depos'd,

depos'd, That the Book was kept by him, in the usual Place, at *Westminster*.

Clerk Reads. Die Mercurii 18 Feb. 1662. The King's Speech in 1662, Read. Page 801.
Here the King's Speech was Read, wherein was that Clause, from whence the Defendants Council argued, that the King himself did not apprehend, he had a dispensing Power, viz. *And yet, if the Dissenters will demean themselves peaceably and modestly under the Government, I could heartily wish I had such a Power of Indulgence, to use upon Occasion.*

Then they proceed to shew that the Lords, in Compliance with the King's Desire, ordered a Bill to be brought in, to enable His Majesty to dispense with the Act of Uniformity; or with any other Laws requiring Oaths or Subscriptions; or Conformity to the Discipline of the Established Church.

And the Bill was Read. Then the *Commons* Journal was produc'd, and Mr. *Jodrel* was Sworn, and deliver'd the Journal into Court: And an Address of the *Commons*, in answer to the King's Speech, was Read; wherein they tell His Majesty, *That it was not adviseable to grant any Indulgence to those Persons, who presum'd to dissent from the Act of Uniformity, and the Religion established: And that the Act of Uniformity could not be dispensed with, but by Act of Parliament.* Page 802. The *Commons* Journal produc'd. An Address of the *Commons* against the dispensing Power, Read.

Then the King's Speech, of the 5th of Feb. 1672, was Read.

Wherein His Majesty says, *He had put forth a Declaration for Indulgence to Dissenters; and had hitherto found a good Effect of it, by securing his Peace at home, while he was engaged in a War abroad.*

Then an Address of the *Commons*, of the 14th of Feb. 1682, was Read.

Wherein they say, *They find themselves bound in Duty to inform His Majesty, That penal Statutes, in Matters Ecclesiastical, cannot be suspended, but by Act of Parliament. And therefore, beseech His Majesty, that the said Laws may have their free Course, until it shall be otherwise provided for by Act of Parliament.*

Page 803. The King's Speech in 1672 read, concerning His publishing an Indulgence. The *Commons* Address thereupon.

Here

Here the King's Message, in Answer to the said Address, was Read, *viz.*

The King's
Answer.

“ That His Majesty did not pretend to the Right
“ of suspending any Laws, wherein the Proper-
“ ties, Rights, or Liberties, of any of his Subjects
“ were concern'd; nor to alter any Thing in the
“ establish'd Doctrine or Discipline of the Church
“ of *England*. But his only Design in this was,
“ to take off the Penalties the Statutes inflicted
“ upon Dissenters.

The Com-
mons Reply.

Then follows the Commons Answer to the said Message, the 26 *Feb.* 1672.

Wherein they tell his Majesty, “ That the above-
“ said Answer to their Petition and Address, is
“ not sufficient to clear the Apprehensions that
“ may justly remain in the Minds of his People;
“ by His Majesty's having claim'd a Power to sus-
“ pend Penal Statutes in Matters Ecclesiastical:
“ And which His Majesty did still seem to Assert
“ in the said Answer, to be intrusted in the
“ Crown, and never question'd in the Reigns of
“ any of his Ancestors. *Wherein they humbly Con-*
“ *ceiv'd, His Majesty had been very much misin-*
“ *form'd,* since no such Power was ever claim'd
“ or exercis'd by any of His Majesty's Predecef-
“ sors: And if it should be admitted, might tend
“ to the interrupting the free Course of the Laws,
“ and altering the Legislative Power, which had
“ been always acknowledg'd to reside in the two
“ Houses of Parliament.

“ *They therefore, with an unanimous Consent, be-*
“ *came again most humble Suitors unto his Sacred*
“ *Majesty,* That he would be pleased to give them
“ a full and satisfactory Answer to their said Pe-
“ tition and Address? And, That His Majesty
“ would take such effectual order, that the Proceed-
“ ings in this Matter, might not, for the future, be
“ drawn into Consequence.

Page 805.

The King
complies with
the Commons.

Then his Majesty's Speech, the 8 *March*, 1672,
was Read.

Wherein his Majesty tells them, “ That if there
“ be any Scruple remaining with them, concern-
“ ing the Suspension of Penal Laws, He then faith-
“ fully promis'd them, that what had been done
“ in

“ in that particular, should not, for the future,
 “ be drawn either into Consequence or Example.
 “ And, that as he daily expected from them, a
 “ Bill for his Supply, so he assur’d them, He should
 “ as willingly pass any other Bill they should of-
 “ fer Him, that might tend to the giving them
 “ Satisfaction in all their just Grievances.

Page 806.

Also a Message to the House, by my Lord Chan-
 cellour, the next Day, was Read, wherein His
 Majesty says, *That he had the last Night, in pur-
 suance of what he then intended, and declar’d in the
 Morning, concerning the Suspension of Penal Laws,
 not being for the future, drawn either into Conse-
 quence or Example, caused the Original Declarati-
 on, under the Great Seal, to be Cancell’d in his Pre-
 sence. Whereof the said Lord Chancellour, and
 several other Lords of the Council were Witnesses.*

And cancels
 his Declara-
 tion.

Then out of the Lords Journal was Read his
 Majesty King James’s Speech to both Houses,
 9 Novemb. 1685. after *Monmouth’s* Rebellion.
 Wherein the King acquaints them, That the Mi-
 litia were not to be depended on, and that no-
 thing but a good Force of well disciplin’d Troops,
 in constant Pay, could secure them from such At-
 tempts. And then goes on, and says, *Let no Man
 take Exceptions, that there are some Officers in the
 Army, not qualified according to the late Tests.*

King James’s
 Speech after
Monmouth’s Re-
 bellion, con-
 cerning his
 dispensing
 with some Of-
 ficers taking
 the Test.

Afterwards, the Commons Address to His Ma-
 jesty, of the 16 Nov. 1685, was Read.

Page 807.
 The Com-
 mons Address
 thereupon.

Wherein they tell His Majesty, “ That as to
 “ that part of his Speech relating to the Officers
 “ of the Army not qualified for their Employ-
 “ ments; *They did, out of their bounden Duty,
 “ humbly represent unto His Majesty, That those
 “ Officers could not, by Law, be capable of their
 “ Employments; and that the Incapacities they bring
 “ upon themselves thereby, can no ways be taken off,
 “ but by Act of Parliament.* That they were ready
 “ to pass a Bill to indemnify them from the Penal-
 “ ties they had incurr’d; but did beseech His Ma-
 “ jesty to give such Directions therein, for the fu-
 “ ture, that no Apprehensions or Jealousies might
 “ remain in the Hearts of His Majesty’s Subjects.

Then

1 Eliz. c. 2.
 read, which
 enjoins the Bi-
 shops to see
 the Laws, con-
 cerning Uni-
 formity put
 in Execution

Then the Paragraph out of the 1st Eliz. c. 2.
was Read.

Where the Bishops are charg'd to see the Laws, in relation to Uniformity, executed; as they will answer it before God, for such Evils and Plagues, wherewith Almighty God may justly punish his People, for neglecting that good and wholsom Law.

The Subjects
Right to peti-
tion. See the
13th Car. II.
Page 808.

Mr. Serjeant *Levins* then repeated some of those Arguments that had been urg'd before, in behalf of my Lords the Bishops; and as to the Right of the Subjects to petition, he observ'd, that this was admitted by a Statute of the 13th of the late King, which says, *That they may petition, and come and deliver their Petition, under the Number of Ten, as heretofore they might have done.* And that as to the Dispensing with the Laws which they petition'd against, there was no Instance of *such* a Dispensation to be found from the Conquest, till the Year 1672, which was immediately Animadverted upon by the Parliament, as had been observ'd.

Sir *Robert Sawyer* added, that he found very few Attempts of this Nature in any King's Reign. But in the Reign of *Hen. IV.* there was an Act of Parliament, that Foreigners should have a free Trade in the City of *London*, notwithstanding the Franchises of *London*. That after the Parliament rose, the King issued out his Proclamation, forbidding the Execution of that Law, and commanding that it should be in Suspence, *usque ad proximum Parliamentum.* Yet that was held to be against Law.

That there was a Statute, the 31 *Hen. VIII. c. 8.* which enabled the King, by Proclamation, in many Cases, to create the Law (which Statute was repealed by 1 *Ed. VI. c. 12.*) And that very Act recites: That the Law is not to be alter'd but by Act of Parliament, and therefore the Parliament enables the King to do so and so.

The Case of
Thomas and
Sorrel, as to
the Dispensing
Power, quoted
by Mr. *Som-*
mers.

Mr. *Sommers.* My Lord, I would only mention the great Case of *Thomas* and *Sorrel*, in the Exchequer Chamber, upon the Validity of a Dispensation of the Statute of *Ed. VI.* touching the selling of Wine. There it was the Opinion of every one of the Judges, and they did lay it down as a
settled

settled Position, That there never could be an Abrogation, or a Suspension (which is a Temporary Abrogation) of an Act of Parliament, but by the Legislative Power. Indeed, it was disputed, How far the King might dispence with the Penalties in such a particular Law, as to particular Persons? but it was agreed by all, That the King had no Power to suspend any Law. I dare appeal to Mr. Attorney himself, Whether, in the Case of *Godden* and *Hales*, which was lately in this Court, to make good that Dispensation, he did not use it as an Argument then, that it could not be expounded into a Suspension? He admitted it not to be in the King's Power to suspend a Law, but said, he might give a Dispensation to a particular Person. This was all he took upon him to justify at that Time.

Whether the King may give a Dispensation as to a particular Person.

Mr. Sommers urges, that there was nothing in the Petition that could denominate it a Libel, or tending to Sedition.

Page 810.

Mr. Sommers farther observ'd, That the Matters of Fact alledg'd in the Petition, were perfectly true, as had been shewn by the Journals of both Houses. And that there could be no Design to diminish the Prerogative, because it appear'd the King had no such Prerogative.

Seditious the Petition could not be, nor could possibly stir up Sedition in the Minds of the People, because it was presented to the King in private, and alone. False it could not be, because the Matter of it was true; and there could be nothing of Malice, because the occasion was not sought, the Thing was press'd upon them. And a Libel it could not be, because the Intent was Innocent: And they kept within the Bounds set by the Act of Parliament, that gives the Subject leave to apply to his Prince by Petition, when he is aggriev'd.

Mr. Attorney's Reply.

Att. Gen. My Lord, They have spent these four Hours, in that which, I think, is not pertinent to the Case in Question. We are told what great Danger our Religion is in, by this Declaration; but the Question is, Whether the Course my Lords the Bishops have taken to preserve our Religion, be Legal or not? They challenge us to shew, that ever there was such a Declaration: Let them show us one Instance, that ever so many Bishops did come under the pretence of a Petition, to reflect

He urges, that upon the King out of Parliament? The few Instances they have produc'd, are Evidence against them, for they are only Matters transacted out of Parliament. As to King *Richard's* Time, 'tis possible they may find some Instances of such Petitioning as this; for our Histories tell us, they had 40000 Men in Arms against the King, and how, at length, he was depos'd.

That Votes and Addresses of the Commons improperly stil'd Declarations in Parliament.

For what was done in 1662. do they shew any thing more than some Debates in the House of Commons, and at last an Address, an Answer by the King, a Reply of the Commons, and then the thing dies? Is a Transaction in the House of Commons a Declaration in Parliament? If you speak of the Court of Parliament in a legal Sense, you must speak of the whole Body, King, Lords and Commons; and a Declaration in Parliament must be by all the whole Body, and that is properly an Act of Parliament. Then they come to the Year 1672, where your Lordship observes the late King did insist upon his Right in Ecclesiastical Matters, and though his Declaration was cancell'd, yet there was no formal Disclaimer of the Right.

That one may be punish'd for a Libel, though the Facts are true.

Page 811.

But whether the Matter of Fact in a Libel be true or not, was it ever made a Question, Whether the Party were punishable for it? If a Man speak scandalous Matter of a Noble Lord, and a *Scandalum Magnatum* be brought for it, though that which was spoken has been true, yet it has been adjudged that the Party cannot justify it, because it tends to a Breach of the Peace: A Man may petition a Judge; but if in his Petition he shall tell the Judge, Sir, You have given an illegal Judgment, and I cannot in *Prudence, Honour or Conscience*, obey it, he would be laid by the Heels, though the Judgment perhaps might be illegal.

There is the Case of *Wrenham* in my Lord *Hobart*: The Lord Chancellor had made a Decree against him, and he petition'd the King that the Cause might be re-heard, and reflected on my Lord Chancellor for Injustice, &c. This was punish'd as a Libel in the Star-Chamber, and the Book says, though it be lawful for the Subject to petition the King against any Proceedings by the Judges, yet it

it

it must not be done with Reflections, and the Justice of the Decree is not to be question'd in the Case.

So here you are not to draw in Question the Truth or Falshood of the Matter complain'd against, for you must take the Way the Law has prescrib'd, and prosecute your Right in a legal Course, and not by Scandal and Libelling. There is a great deal of Difference between not doing a Thing that is commanded, if I think it unlawful, and coming to the King and telling him, Sir, you require that which is against *Prudence, Honour and Conscience*.

Might not my Lords the Bishops have acquiesced under their Passive Obedience till the Parliament met? which the Declaration tells them was to be in *November*; but they must do it out of Parliament, of which no Precedent can be shewn. And as to the Words malicious and seditious, which they complain of, because they say no Malice or Sedition is found, we very well know that these things arise by Construction of Law out of the Fact. If the Thing be illegal, the Law says it is seditious, and a Man shall not come and say he meant no Harm in it: If the Act be unlawful, the Law supplies the Malice and evil Intentions.

Sol. Gen. I do agree that the Lords and Commons in Parliament may make known their Grievances to the King, but it cannot be concluded from thence that my Lords the Bishops may do it out of Parliament; so that all the Precedents they have produced of what the Lords did, or what the Commons did in Parliament, is no Warrant for them to shelter themselves under against the Information here in question: I have heard nothing said that could give any Colour to such a thing, but the Curse that has been read in 1 *Eliz.*

They tell us that the Declaration in 1662. was the first Declaration to suspend the Laws without Act of Parliament, and yet in the same Breath take notice of the King's Declaration from *Breda*; then they give us another Instance of it in the Year 1672, which shews that this Declaration of his present Majesty is not such a Novelty but has been of Parliament.

That the Bishops should have acquiesced under their Passive Obedience till the Parliament met, and not have address'd in this manner out of Parliament, of which there is no Precedent.

As to the Epithets in the Information, that it was malicious and seditious.

The Law always implies so much, if the Fact be illegal.

Page 812.
Mr. Solicitor denies the Subject has a Right to Petition in Matters of Government out of Parliament.

Page 813.

Page 814.

That King Charles cancelled his Declaration for a Suspension, in consideration of a Sum of Money.

That Votes and Addresses ought not, or ever were produced in Evidence before. The Bill of Exclusion mention'd; at which the People hiss'd.

That the King may make Constitutions in Matters Ecclesiastical. And that the Bishops denying that Prerogative, was in Diminution of the Royal Power as laid in the Information.

been done often before. In 1672, the King was in Distress for Money, being entangled in a *Dutch* War and wanted a Supply, he capitulated with the Commons, as you have heard, and upon the Commons Address he asserts it to be his Right, and makes his complaint of it to the Lords how the Commons had used him, and there are Conferences with the Lords about it; but at length it all ends in a Speech by the King, who comes and tells them his present Necessities, and so was willing to remit something at the Instigation of the Commons, and he has a good Lump of Money for it. Wou'd this amount to a Declaration in Parliament? Can my Lords the Bishops imagine that this is to be imposed upon the King, or upon the Court, for a Declaration in Parliament? And shall the Addresses of the House of Commons be allowed as Evidence? Give me Leave to say it, my Lord, If you suffer these Votes, these Copies of imperfect Bills, these Addresses and Applications of one or both Houses to the King, to be Evidence and Declarations in Parliament? then what will become of the Bill of Exclusion? [*Here there was great Hissing.*] Shall any body mention that Bill of Exclusion to be a Declaration in Parliament? If so, then there is Declaration against Declaration, the Commons against the Lords: And if my Lords the Bishops have said these are Declarations in Parliament, and they are not Declarations in Parliament; and if they accuse the King of having done an illegal thing, because he has done that which has been declared in Parliament to be illegal, when it was never so declar'd; then the Consequence is very plain, that they are mistaken sometimes, and I suppose by this Time they believe it. The King by his Prerogative may make Constitutions and Orders, in Matters Ecclesiastical, without a Parliament; and shall the Bishops come and tell him, Sir, You have issued out an illegal Declaration, contrary to what has been declared in Parliament, when there is no Declaration in Parliament: Is not this diminishing the King's Power and Prerogative in Matters Ecclesiastical? And do not they,

as

as much as in them lies, stir up the People to Sedition?

Just. *Holloway*. You say the Bishops have no Power to petition the King: Now the King having made such a Declaration of a general Toleration and Liberty of Conscience, and requiring the Bishops to disperse this Declaration, which they say, in Conscience they cannot do, because they apprehended it to be contrary to Law: What can they do, if they may not petition.

Page 815.

Sol. *Gen*. Sir, they should have acquiesc'd 'till the Meeting of the Parliament. [*At which the people hiss'd.*]

Page 816.

They must not come and fly in the Face of their Prince, and say it is illegal; and that he acts against Prudence, Honour or Conscience; sure this is not to be permitted: This is Libelling with a Witness.

L. C. *J*. Truly, I think the Bishops might petition the King out of Parliament; yet, they ought to have done it after another Manner; for if they may petition the King in this reflective Way, it will make the Government very precarious.

Chief Justice held, they might petition, but not in that reflective Way.

Just. *Powel*. Mr. *Solicitor*, It would have been too late to have staid for a Parliament; for it was to have been distributed by such a Time.

Sol. *Gen*. They might have lain under it, and submitted.

Just. *Powel*. No, they would have run into Contempt of the King's Command; without petitioning the King not to insist upon it: And if they had petition'd, and not shewn the Reason why they could not obey, it would have been look'd upon as a Piece of Sullenness; and that they would have been blam'd for as much on the other Side.

Mr. Serj. *Baldock* insisted much on the King's Power in Ecclesiastical Matters, and that the Bishops ought to yield him active Obedience in every thing that was not contrary to the Word of God: And that they were only commanded to distribute the Declaration, and their Approbation of it was not ask'd. However, that it was not for

Page 817.

their Disobedience they were call'd in Question, but for giving such Reasons for it, in their Libellous Petition.

Sir B. Shower urges that this was as much a Libel, as the Petition of the City of London against dissolving the Parliament.

Mr. Recorder observ'd, that altho' the Bishops might have a Right to petition, their Peerage gave them no more Right to libel his Majesty than his other Subjects. That it was as lawful for the City of London, to petition for the Sitting of a Parliament, as it was for my Lords the Bishops, to give Reasons for their Disobedience to the King's Commands. And, if the Matter of the City of London's Petition was reckon'd to be libellous, in saying, that what the King had done, in dissolving the Parliament, was an Obstruction of Justice, What other Construction could be made of my Lords the Bishops saying, that the King's Declaration is illegal? And if the Matter of this Petition be of the same Nature, with that of the City of London, it ought to have the same Condemnation.

Mr. Serj. Trinder affirm'd, That in Sir Edward Hales's Case it had been adjudged, that the King had Power to dispense with penal Laws; and that in 1 Eliz. and many other Statutes, there were express Sayings of the King's Supremacy; and that the King's Authority, was not to come under the Suffrages of a Parliament.

Then my Lord Chief Justice Sum'd up the Evidence, and directed the Jury.

Page 818.
The Chief Justice directs the Jury, and gave his Opinion it was a Libel.

He told them, that if they believ'd that the Petition, which my Lords the Bishops presented the King, was the same that was produc'd in Court, that was a sufficient Publication of it. And, if they did believe that this was the Petition that was presented to the King; the next Enquiry was, Whether it was a Libel? That any thing that should disturb the Government, or make Mischief, or a Stir among the people, was certainly within the Case of *Libellis famosis*: And he gave them his Opinion, that he did take it to be a Libel; but this being a Point of Law, he desir'd the other Judges would give their Opinion.

Page 819.

Just. Holloway is of Opinion, it is not a Libel.

Mr. Just. Holloway said, It being the Right of every Subject to petition, it could not be a Fault, unless

unless it were done with an ill Intent: Indeed, if the Jury were satisfied it was done with an ill Intention, as to raise Sedition, or the like; they ought to find them Guilty: But if they did deliver the Petition to save themselves harmless, and to free themselves from Blame; by shewing the Reason of their Disobedience to the King's Command, which they apprehend to be a Grievance to them; and which they could not in Conscience give Obedience to. He could not think it was a Libel.

Mr. Justice *Powel* held, that to make it a Libel, it must be false and malicious, and that it must tend to Sedition; and that he saw nothing offer'd by the King's Council, to shew either Falshood or Malice in it: That he did not remember any Case in Law (and he had taken some Pains, upon this Occasion, to look into it) that there was any such dispensing Power in the King, and then it could be no Libel.

Just. *Powel* held, it was not a Libel.

That this was a Dispensation with a Witness; it amounted to an Abrogation and utter Repeal of all Laws; and he could see no Difference in Law, between the King's Power to dispense with Laws Ecclesiastical; and his Power to dispense with any other Laws whatsoever: That, if this were once allow'd there would need no Parliament; all the Legislature would be in the King, which was a Thing worth considering; and he left the Issue to God and their Consciences.

Mr. Justice *Allybone* lays it down as a Rule, That no Man may take upon him, to write against the actual Exercise of the Government, unless he have Leave from the Government, but he makes a Libel: And further, that no private Man may take upon him to write about the Government at all. That when the Government comes to shake his particular Interest, he may Redress himself by Law. But, if he intrudes himself into other Men's Business, that does not concern his particular Interest, he is a Libeller.

Just. *Allybone* held, that writing against the actual Exercise of the Government, was Libelling. Page 820.

But any one might petition in Matters relating to his private Interest.

That he did agree, That every Man might Petition the King or Government, in a Matter that relates to his own private Interest: But to med-

And that it had been adjudged a Misdemeanour, to petition the King to put the penal Laws in Execution,

dle with a Matter that related to the Government, he did not think my Lords the Bishops had any Power to do that more than others. That when the Houses of *Lords* and *Commons* are in Being, it is a proper Way of applying to the King: But if every private Man should come and interpose his Advice, he thought there would be no End of Advising the Government. That in the Time of King *James* the 1st, there was a solemn Resolution, That it was a High Misdemeanour, and next to Treason, to petition the King to put the penal Laws in Execution.

Mr. *Pollexfen*. They there threatned, unless their Request were granted, several Thousands of the King's Subjects would be discontented.

Just. *Powel*. That is the Reason of that Judgment; I affirm it.

Just. *Allybone* went on, and said, he put no great Stress upon that Objection; that the Matter of the Petition was not false; and for Sedition it was that, that every Libel carry'd in itself: And as every Trespass implies *Vi & armis*, so every Libel against the Government, carries in it Sedition: And all the other Epithets that are in the Information. That was his Opinion, as to the Law in general.

He said, he would not debate the Prerogative of the King, or the Privileges of the Subject; but as the Fact was, he thought these Venerable Bishops, did meddle with that which did not belong to them: They took upon them in a petitionary Way, to contradict the actual Exercise of the Government: Which he thought, no particular Persons might do.

Then my Lord Chief Justice, gave the Jury Leave to send for Wine.

Jury-Man. My Lord, We pray, We may have the Papers that have been given in Evidence.

L. C. J. They shall have a Copy of the Information, the Libel, and the Declarations under Seal, but not the Votes of the House of Commons, or the Journals; for they can have no Papers but what are under Seal.

Serj. *Levins*. They may have them by Consent.

Then

The Court permit the Jury to send for Wine.

Page 821.
They are not permitted to have any Papers with them, but what are under Seal.

Then the Court arose, and the Jury went to consider of their Verdict; and staid together all Night, without Fire or Candle.

The next Morning, being *Saturday* the 30th of *June*, about 10 a Clock, his Grace the Arch-Bishop, and the rest of the Bishops came into Court; and the Jury appeared, and brought in their Verdict, That the Defendants were *Not Guilty*.

At which there were several great Shouts; and Mr. *Solicitor* moving that they might be committed for it, a Gentleman of *Grays Inn* was seiz'd; to whom my Lord Chief Justice said, Sir, I am as glad as you can be, that my Lords the Bishops are acquitted; but your Manner of Rejoycing here in Court, is indecent: You might Rejoyce in your Chamber, or elsewhere, but not here. *The Gentleman was soon after discharg'd.*

L. C. J. Mr. *Attorney*, Have you any thing more to say to my Lords the Bishops?

Att. Gen. No, my Lord.

Then the Court arose, and the Bishops went away.

The Jury continued together all Night, without Fire or Candle.

The Defendants are acquitted.

The people shout.

A Gentleman committed for it, but is soon after released.

Proceedings in the House of Commons,
against the Earl of CASTLEMAIN,
1 W. and M. 1689.

Page 843.

The House of Commons having directed the Governor of the Tower to bring the Earl of Castlemain before the House, Mr. Speaker said as follows,

MR Lord, The House having understood that you went Ambassador to Rome, and also took your Place at the Board, as a Privy Counsellour, without taking the Oaths (which are great Crimes, and against Law) They have sent for you, to know what you have to say for your self.

His Lordship answer'd, That it put him into a more than ordinary Confusion to find himself in that Place, as a Criminal, especially, since he had ever made the Glory and Welfare of England his chief

Charg'd with going Ambassador to Rome, and sitting in Council, without taking the Oaths.

chief Aim. That he was so far from desiring to be sent on this Embassy, that he had us'd his utmost Endeavours to avoid it. That when my Lord *Sunderland* hinted what the King's Intentions were, and he recur'd to his Lordship's Frindship in the Matter, my Lord *Sunderland* answer'd, That if Subjects should refuse their King's Service in every Thing that was troublesome, or *contra Cœur* Kings would be in an ill Condition: That his Request was beyond his Power, and, he believ'd, the King would be positive; which he found he was. And could it be immagin'd, that he, who had seen the Grandeur of so many *Roman* Embassies, and knew they exceeded in Splendor and Expence, three times those to any Crown'd Head whatever, should not be averse to such an Employment; which had for its Subsistence, no other Establishment than to *Spain* or *France*? (which being 100 *l.* a Week, amounts but to 5200 *l.* per Annum.)

Answers, That he could not refuse the King's Commands.

He desir'd them, in the next place, to consider, that there was no Law against it: That he was commanded by the King, who might command the Service of any of his Subjects, especially on Embassies; as appear'd by many Instances, and particularly that fatal One in the present Century, in the Case of the Lord *Overbury*.

And there was no Law against it.

That he hop'd they would remember what he went to *Rome* about, that it was only with a Letter, with a Complement, from a profess'd Catholic King, to his Holiness; as all Princes of that Communion send in the beginning of their respective Reigns. And as he knew no Law which forbade his Obedience, so neither did he know how such a Law could be made; for the Pope being a Temporal Prince, and his Territories bordering on the Mediterranean and Adriatick Seas, if the Subjects of this Crown should be drove into his Ports, or surpriz'd in their Travels, by a *Roman* Party, it would be strange, if the Government should want a Power to send a Messenger, to Ransom or Compound for them. That where-ever the Commerce and Intercourse of Nations has been broken or prohibited, yet the Commander in Chief, much more a King, still had the Liberty of beating

beating a Parley, or dispatching a Trumpet; nay, of sending and receiving Letters, as often as Occasion has requir'd.

That as for Religion, He neither had any Commission concerning it, or ever transacted any thing with his Holiness about it. And that the Court of *Rome*, and every *Englishman* there, look'd upon him as one, that if any Immunity of the Crown were in question, or any Temporal Concern of the Kingdom touch'd, he would stand as much in the Gap, and be in as diametrical an Opposition, as any Person of the Reform'd Religion whatever. And that it was hard he must suffer as a Transgressor of the Law now, when he must have suffer'd by the Law, if he had refused his Majesty's Orders and Commands.

He begg'd leave also to take Notice, That while he resided in *Rome*, his House was an *Asylum*, or Place of Refuge, to all his distress'd Fellow Subjects. That he saw Justice done to the *English* Merchants, where-ever they were abus'd or molested in their Traffick. And that his Care extended to all our Factories in *Italy*, and not only the Consuls; but every private Person, found an easy Access to him, and an indefatigable Zeal in their Concerns; and for which, the Merchants of the *Turkey* Company had return'd him their Thanks.

That if the Employment he submitted to, were a Fault, he had already sufficiently suffer'd for it, by the Expences it had occasion'd; which he had never set bounds to, when he thought them for the Honour of his Nation. That had he been sent to *Constantinople*, where there are *Mahomitans*, or to *China*, among the *Gentiles*; the *Eclat* or Figure he should have made, would not have been consider'd as an Honour done to their respective Religions, but for the Glory of our own Nation. And that he could not but hope, they would have some Opinion of an Ambassadour, (tho' at *Rome*) who to his Power, kept up the Glory and Grandeur of *England*.

That if he had done amiss in obeying the King's Commands, then no Consul, who had pursued a Pirate or Banditti to *Rome*; nor no private Factor,

That he transacted nothing concerning Religion.

Shews how serviceable he was to the *English* Merchants, while he resided at *Rome*.

That he impaired his Estate, to maintain the Glory and Grandeur of the *English*.

Page 845.
That if he had offended, then every private Factor, who transacted Business at *Rome*, must be deem'd an Offender.

that had follow'd a Debtor thither, but were far greater Criminals; and might be charg'd as Contemners and Breakers of the Laws.

As to his sitting in Council without taking the Oaths, the Judges were of Opinion the King might dispence with it.

As to his being a Privy Counsellour, without taking the appointed Oaths, he acknowledg'd this to be a breach of the Law, but apprehended it in the King's Power to dispence with them, which he hop'd would in some measure justify him. That he saw *Non Obstantes* deem'd lawful, which, to him, was the same Thing with Dispensing. And that King *Charles* the 2d, dispens'd with the Act for the Regulation of Carriages, by Proclamation, almost as soon as it was made, without the least Murmur. And that not only the Great Men of the Long Robe, but the Judges themselves, had declar'd in Favour of this Prerogative: So that when he was call'd to the Board, he could not think the omitting to take them, any Crime; and if there were a Fault, the Judges, and not he, should suffer, who had led him into this Error. For if Private Persons, notwithstanding the Determinations of the Courts of Justice, must still be responsible, no Man could be safe, or ever be at rest; because he could never know, whether he were Innocent or Guilty.

Complains he was illegally imprison'd at the Revolution.

He desir'd Liberty, also, to acquaint the House how he became a Prisoner. He said, That as soon as the King first left *Whitehall*, he thought it Decency to go out of Town; and therefore, three Days after, he took Coach for *Montgomeryshire*, where he usually resided in Summer. And when he came to *Oswestree*, a small Corporation on the Borders of that County, he was stopp'd by the Rabble, and afterwards detain'd at his Inn, by the Mayor, who set a strong Guard upon him, though no body made any Oath against him, nor had the Mayor any Orders from *London* for it. And after a Months Confinement, the Mayor refused to bail him, though he was told by two Eminent Lawyers in the Neighbourhood, he could not legally refuse to do it. And three Weeks after this, he was brought to Town by a Party of Horse. He observ'd, from hence, how the Liberty of the Subject had been wilfully invaded by that Magistrate; and said, If he had been Conscious of any Guilt, he

he should not have gone to a Place where he was known to every body, but have fled some other way.

Then his Lordship retir'd, and a little after, was call'd in again; and the House desir'd to see the Instructions he had when he was sent to *Rome*.

His Lordship said, That at his setting out for *Wales*, he burnt his Papers, especially such as related to *Rome*; which he knew, in that Time of Trouble and Distraction, would render him liable to the Censure of every malicious Man. That there was nothing in them indeed, but Things of Course; but Copies of those Powers might be found in my Lord *Sunderland's* Office, from whence they came. And that he had not any private Instructions given him.

Then his Lordship retir'd again, and after a long debate, the House pass'd this Order. *That the Earl of Castlemain stand committed to the Tower, by a Warrant from this House, of High Treason, for endeavouring to reconcile this Kingdom to the See of Rome, and for other High Crimes and Misdemeanours.*

His Lordship desir'd Leave to acquaint the House, that the Custom of the *Tower*, as to Prisoners, was chang'd; for that heretofore (unless there were a particular Order of State to the contrary) they had the Liberty of the *Tower*, viz. To walk about, at seasonable Hours, with the Warder. But now, if one was committed on Suspicion of High Treason, as he was, he was close confin'd to his Lodgings, and his Friends not suffer'd to come near him, till Leave were granted by the Secretaries: He desir'd therefore, he might have the Liberty that had been allow'd formerly.

But notwithstanding; his Lordship was made close Prisoner at his return to the *Tower*; and on *Wednesday*, the 5th of *February* following, he was brought by *Habeas Corpus* to the *Kings Bench Bar*, where Mr. *Attorney* having nothing to object against him, he was bail'd by the Earls of *Bath*, *Aylesbury*, and *Suffex*, and the Lord *Lansdown*; Himself in 10000 *l.* and the Bail in 5000 *l.* apiece.

He is Committed by an Order of the Commons, for endeavouring to reconcile us to *Rome*.

And close Confin'd. Moves for a *Habeas Corpus*, and is admitted to Bail.

The Arraignment of JOHN PRICE, Esq; late Receiver General to King Charles the II^d, and One Hundred other Protestants, for High Treason, at the Assizes held at Wicklow, in the Kingdom of Ireland, 5 March, 1689.

An Introduction, giving an Account how the Prisoners came to be charg'd with High Treason.

MR. Price having his Country Seat at *Ballinderry* in the County of *Wicklow*, Twenty-four Miles from *Dublin*, upon King *James's* going for *France*, obtain'd the Lord Deputy *Tyrconnel's* Protection, for the Security of himself and Family; as did many other *English* Protestants: For the Lord *Tyrconnel*, in order to raise a great Army, had given out Commissions to such *Irish* Papists as would promise to subsist and cloath their Men for three Months; and these new Officers being Men of mean Fortunes, their Men liv'd on the Plunder of the *English*; and would enter their Houses in the Day Time, and demand what Provision they pleas'd; and frequently rob them, and drive away their Cattle in the Night. And at the same Time, the Priests of every Parish, charg'd their People to arm themselves with half Pikes and Skeans, and bring them to Mass, on pain of Excommunication; which was the occasion of daily Thefts, Robberies, and other Outrages upon the *English*, especially in the County of *Wicklow*; where some Hundreds assembled themselves for these Purposes, giving themselves the Names of *Merry Boys*.—— Whereupon several of Mr. Price's Neighbours repair'd to *Ballinderry*, to preserve Themselves and Goods. But an Order coming out soon after, for the taking away all Horses and Arms from the Protestants, both in City and Country, Col. *Toole* came with a Party of his Men, and demanded what Horses and Arms they had in *Ballinderry*; but Mr. Price, and the rest, having the above said Protection, refused to obey him: And Complaint being made of it at *Dublin*, Colonel *Skeldon* was sent down with a body of Horse and Foot

Foot against *Ballinderry*. Mr. Price, upon Colonel *Sheldon's* approach, submitted to him; and Mr. Price, with all the rest that were in the House, were made Prisoners; but the Prison of *Wicklow* not being able to contain them, several were admitted to Bail till the following Assizes, which began the 5th of *March*, 1689.

The Grand Jury consisted of Seventeen Persons, whereof Ten were Papists; to whom the Lord Chief Justice *Keating* gave a very long Charge. He told them, that they had that Day before their Eyes, the greatest Example that a Gracious Prince could give to the best of Subjects. That they saw His Majesty, King *James*, notwithstanding the great Troubles on his own Person, was not wanting in his Care towards them; but had sent his Judges, with a Commission to inquire into all their Maladies and Grievances. He observ'd, That the Mischiefs which had fallen on a great part of the Kingdom, and particularly on this County, had arisen, for the most part, from a Rabble of People, who had armed themselves without any direction from the Government, with unusual Weapons, such as half Pikes and Skeans; which, he thought, look'd rather like a Design to Massacre and Murder, than any Thing else. That he did not lay this to the Charge of any that were under Command, though it was possible that some of them, under the scarcity they labour'd, might give their Assistance, or, at least, some Incouragement to those Robbers; otherwise it could not be, that whole Flocks and Drovers of Cattle should daily be driven away, and yet no one taken or brought to Justice for it. That the King was not wanting in his Care, and had given direction to have the Laws put in Execution, and Criminals punish'd; and the Government had issued many Proclamations, but they were grown too familiar with them. That it was true the Prince of *Orange* had invaded *England*, and had the same Design on this Kingdom; whereupon the Government had given Orders for raising a greater Army than at any Time heretofore, and the Necessity of the Thing required it; but never intended the People should

Page 848.

Ten of the Grand Jury Papists.

The Lord Chief Justice *Keating's* Charge to them.

The *Irish* Papists arm themselves with half Pikes and Skeans at the Revolution.

Incourag'd by the Regular Troops, in their Depredations on the *English*.

Page 849.

He tells them the Army was raised to secure them against an Invasion by the Prince of *Orange*.

Arm themselves with half Pikes and Skeans, which might be fit indeed for the Mountains, or to guard a Man's House, but not to go abroad with at Noon-day. And he directed those Gentlemen who were Justices of the Peace, or Officers of the Army, to secure such People, and bind them over; and know by what Authority they dare go abroad with such Weapons.

No Petty
Treason in
Ireland.

Directs the
Jury to in-
quire of Con-
spiracies a-
gainst the
Government.

Tells them
King James
was soon ex-
pected in
Ireland.

He shews
them what
was deem'd
High Treason.

Murder is
High Treason
in Ireland.

Page 850.
Takes Notice
how misera-
bly this Coun-
ty was ra-
vag'd by a
parcel of Vil-
lains, and di-
rects them to
inquire after
the Offenders.

Then he proceeded to direct the Grand Jury in their Enquiries, particularly in High Treason (and observes they have no such Thing as Petty Treason in Ireland.) He tells them, That if any one went about to Seize or Imprison the King, it was High Treason; and there was but a few Steps between the Prisons and Graves of Princes. That if they observ'd any Conspiracy framing against the King, they ought to look to it betimes; for if the Blow was once struck there, there would be no retrieving it. That he was inform'd by Authority, that the King was soon expected in this Kingdom, which he look'd on as a Place of Refuge: And that tho' it were a great Misfortune he should be forc'd thither, yet they might look upon it as a Blessing, that he should think himself Safe here, when he could not be so elsewhere. And said, That he was the first King, since *Henry the 2d*, except *Richard*, who had been in that Kingdom. He acquainted them that the Seizing any of the King's Forts or Ships, the holding Correspondence with any of the King's Enemies, or with Rebels in actual Rebellion, that any of these Facts was High Treason. And that Murder, though but Felony in *England*, was made High Treason there. And he further directed, that where any People had gone about Burning and Robbing of Houses, they also should be Indicted for High Treason.

He observ'd, that some other Counties had been Ravag'd; but in this County, the Villains spared not even the wearing Cloaths, and Habit of the Women and Children; so that they were forc'd to appear abroad without any thing to cover their Nakedness: He conjur'd them therefore, by all that was sacred, to make diligent Enquiry into these Matters.

He

He told them, all Riots and Routs were also to be enquir'd of; and tho' it were lawful for Numbers of people to assemble in their own Defence, where they heard the Country was Robbing and Spoiling; yet, they were not to contest with the Government, or do any thing in prejudice of that. *This he hinted, in Relation to Mr. Price, and those other Gentlemen that had been made Prisoners with him.* After the Charge, the Grand Jury withdrew, and an Indictment of High-Treason, was found against Mr. Price, and One Hundred others; whereof Thirty-One, being bail'd, did not appear.

But tells them that tho' people might assemble for their Defence against such Rapparees, they ought not to contest with the Government.

" The Indictment set forth, That the Prisoners, the 25th Day of February, in the 5th Year of King James the 2d, at Ballinderry, in the County of Wicklow; with divers other Traytors and Rebels, in a warlike Manner, did assemble themselves, and a cruel and open War and Rebellion against the said King and his Subjects, did raise and levy; intending to depose the said King, and to put him to Death. And to that end, the said Prisoners, at the Time, and Place aforesaid; with other wicked Traytors and Rebels, did Arm themselves with divers warlike Weapons, as well Offensive as Defensive; and did traiterously excite others, the King's Subjects, to join themselves with them, against the King's Peace, the Duty of their Allegiance, &c.

An Indictment of High Treason found against Mr. Price, and One Hundred others who had assembled in their own Defence, but refus'd to submit to Col. Toole.

Upon this Indictment, Mr. Price, and Sixty-Nine others, who appeared, were arraign'd, and pleaded *Not Guilty*.

The Prisoners complain they were guarded and insulted by Soldiers.

The Prisoners complain'd to my Lord Chief Justice, that they were kept by a Guard of Soldiers who were very rude to them, and insulted them; and would not suffer them to have any Rest in the Night: And particularly, that the last Night, a Piece went off in the Room, amongst them.

The Chief Justice declares that Prisoners under the Civil Powers, ought not to be guarded by Soldiers with Fire-Arms.

The Chief Justice thereupon, told the Sheriff, that his Prisoners ought not to be kept with Fire-Arms, or by Soldiers: That the Law knew nothing of Fire-Arms: And he said, he had receiv'd

Page 851.

Directions from the Lord Deputy, that the Prisoners should have all the Justice imaginable done them. And then, the Court arose.

The Prisoners agree in their Challenges.

The next Day, being the 7th of *March*, the Prisoners were brought into Court again in order to their Tryals, and the Jurors were call'd : The first of whom was *Thomas Cowdell*, whom Mr. *Lewis*, one of the Prisoners, challeng'd peremptorily ; Whereupon, Mr. *Fitz Patrick*, who was of Council for the King, demanded if they would agree in their Challenges, otherwise they must be try'd seperately. And it was at length agreed, that if any one made a peremptory Challenge, the other Prisoners should be satisfied with it.

Mr. *Lewis* continued his Challenges 'till the Pannel was gone through ; and there was a Defect of Jurors, only Two *Protestant* Gentlemen being Sworn.

Then the Sheriff gave in a new Pannel of Eleven, who were all likewise challeng'd.

L. C. J. Keating. Mr. *Sheriff*, How many Free-Holders have you on the Grand Jury ?

Sheriff. Six or Seven my Lord.

The Grand Jury ought to be all Free-Holders.

L. C. J. The Law requires that all the Grand Jury should be Free-Holders, and have you but Six ?

Mr. *Fitz Patrick.* In Cases of Necessity my Lord.

L. C. J. I will not be hang'd with Justice *Belknap* nor *Tressilian* neither : Have you all your Free-Holders here, Mr. *Sheriff* ?

Sheriff. My Lord, I have summon'd 'all the Free-Holders there are in the County, I sent Yesterday above Twenty Miles for One Gentleman. They are all gone out of the County. I hope you do not expect I should go to the *North*, or *Isle of Man*, or *England*, or *Scotland* among the Rebels to summon them.

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There being a Defect of Jurors the King's Council move to have them try'd in another County.

L. C. J. What do you say in this Case ; that are of Council for the King ?

Mr. *Fitz Patrick.* My Lord, I cannot tell what to say.

Mr. *Hammond.* It appears there are not a sufficient Number of Free-Holders in this County, the

the Lands being in few Hands; and therefore, Must not Justice be done? We would have it remov'd to the next County, or some other County.

Baron *Lynch*. When did you ever hear that a Matter Capital was try'd in a foreign County? In Matters Civil by Rule of Court, or Order of *Chancery* it may be; but of a Capital Offence it was never known: And we are, by our Commission, to try Offences in the Counties where the respective Facts are committed. We must try them in this County, and cannot remove them from one County to another.

There being a Defect of Jurors, at last the Court were inclin'd to bail the Prisoners 'till the next Assizes; but consulting among themselves, they agreed it could not legally be done after they were arraign'd.

Whereupon, the Chief Justice sent privately to *Dublin* to the Lord Deputy, to acquaint him, that if they were left in Prison until the next Assizes they would certainly perish, they having lost all they had, and the County was not able to maintain them: Upon which he receiv'd Orders to bail all but Seven of the Principal, viz. *John Price, Esq; Thomas King, Richard Westland, William Lewis, James Baron, Joseph Crichley* and *George Crichley*; who were kept close Prisoners, in order to their Tryal the next Assizes. But, 'tis probable the Wars that ensued, prevented their being brought to Tryal.

Several Complaints were made in Court by the *Protestants*, of their being robb'd and stripp'd of all that they had, even of their Cloaths from their Wives and Children, as well as themselves.

Then the Lord Chief Justice ordered the Proclamation to be read, importing, That the Officers should restore the *Protestants* such of their Horses again, as were not fit for Service.

At the same Assizes several were indicted for stealing of Cattle, whereof Two were convicted: And when the Book was brought them to read, the Lord Chief Justice directed the Ordinary not to assist them, and they were condemned; the Ordinary returning *Non legit*, to each.

But the Court answer'd, Capital Offences must be try'd in the County where they are committed.

Page 853.
For want of Jurors the Tryal is put off till next Assizes, and all but Seven of the Prisoners bail'd by Order of the Government, tho' they had been arraign'd.
Complaints made to the Court by the *Protestants*, of their being robb'd and stripp'd of their Cloaths and all they had.

Page 854.
Two convicted of stealing Cattle, and the Ordinary being directed not to assist them in reading, they are condemn'd.

Page 855.
The Lord
Deputy's Let-
ter read at
the Assizes,
requiring par-
ticular Per-
sons to ad-
vance Money
for the Use of
the Army; by
way of Loan
to the King.

Afterwards a Letter from the Lord Deputy to the Judges of Assize was read, importing that the Lord Deputy having receiv'd certain Information that the Prince of *Orange* intended to invade the Realm, to prevent the Subversion of the Govern-ment, and preserve the Lives and Properties of the people; he found himself under a Necessity of keeping a considerable Army on foot; which, considering the Decay of Trade, and the sinking of the King's Revenue, could not be supported but by extraordinary Means: And that since the same could not be done by Parliament, he could not think of a more effectual Expedient, than by voluntary Subscriptions, by way of Loan from the people; which would prevent all Disorders that might otherwise be committed by the Soldi-ers, though he should always endeavour to pre-vent them as much as possible. He therefore pray'd their Lordships the Judges, to recom-mend this weighty Affair to the Inhabitants of the respective Counties at the Assizes; and ap-point the respective Sheriffs to procure voluntary Subscriptions by way of Loan, of some certain Sum of Money from every Person, to which they should set their Names; and which should after-wards be accepted in Money, Wheat, Oats, or Oat-meal; towards the Maintenance of the Army.

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The Grand
Jury represent
how their
County is im-
poverish'd,
and excuse
their Compli-
ance; for
which they
are repri-
manded by
Baron *Lynch*.

In Answer to which, the Grand Jury drew up a Paper, which they enter'd in their Book and presented to Mr. Baron *Lynch*; setting forth the extream Poverty of their County, occasion'd by the daily Ruin of the *English*, &c. and shewing that they were not able to raise any thing confi-derable for the Army. And the Chief Justice be-ing return'd to *Dublin*, Mr. Baron *Lynch* told the Grand Jury, that their Paper was a Scandal to their Country, and would be taken amiss by the Government, and therefore order'd it to be torn out of the Book; which was done accordingly.

The

The Arraignment of Sir RICHARD GRAHME, Bart. Viscount PRESTON, JOHN ASHTON, and EDMOND ELLIOT, Gent. at the Sessions-House in the Old-Baily, London; on Friday the 16th of January, 2 W. and M. 1690, upon an Indictment of High-Treason found by the Grand Jury for the County of Middlesex.

“ THE Indictment sets forth, That the Pri-
 “ soners the 29th Day of *December*, in
 “ the 2d Year of their present Majesties King
 “ *William* and Queen *Mary*, and divers other
 “ Days and Times as well before as after; at
 “ the Parish of *St. Clement Danes*, in the
 “ County of *Middlesex*, did maliciously and
 “ traiterously conspire, compass, and intend to
 “ depose the said King and Queen, and to put them
 “ to Death: And to that End, at the Time and
 “ Place aforesaid, did traiterously propose, con-
 “ sult and agree, to procure and prepare great
 “ Numbers of Armed Men, to make War and
 “ Rebellion against the said King and Queen.
 “ And that they did prepare and compose, and
 “ cause to be prepar’d and compos’d, divers trea-
 “ sonable Letters, Notes, Memorandums, and
 “ Instructions in Writing; to inform *Lewis* the
 “ *French* King and his Subjects, Enemies of our
 “ said Lord and Lady the King and Queen; of
 “ the Number, Force, and Condition of their
 “ Majesties Ships of War; how they were Mann’d,
 “ and the Names of several of the Captains, and
 “ how the Castles and Fortresses of *Portsmouth*,
 “ *South-Sea*, and *Gosport*, within this Kingdom,
 “ were strengthened and fortified; and how the
 “ same might be taken and seiz’d: As also, how
 “ they might invade this Kingdom, and depose
 “ their Majesties: And also, when and where
 “ the Enemies Fleet might attack their Majesties,

The Indict-
 ment for
 High-Trea-
 son, in con-
 spiring to de-
 pose and de-
 stroy the K.
 and Queen.

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1 Overt Act.

2 Overt Act.

3 Overt Act.

Page 858.

4 Overt Act.

5 Overt Act.

6 Overt Acts.

Indicted also
for adhering
to the King
and Queen's
Enemies.

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“ and how to send Ships to plague the City of
 “ *London*, and War and Rebellion within this
 “ Kingdom to procure. And that the Prisoners
 “ at the Time and Place aforesaid, did secretly,
 “ knowingly, and traiterously procure, conceal,
 “ and keep Two several Bills of Exchange, for
 “ the Payment of several Sums of Money to the
 “ Enemies of our said Lord and Lady the King
 “ and Queen: As also divers traiterous Letters,
 “ Notes, &c. *prout autea*, to inform the said
 “ *Lewis*, and others their said Majesties Ene-
 “ mies, of the Force and Condition of their Ma-
 “ jesties Ships, &c. *prout autea*. And that af-
 “ terwards, *viz.* the 30th Day of *December*, in
 “ the Year aforesaid, at the Parish of *St. Clement*
 “ *Danes* aforesaid: The said Prisoners, for the
 “ Sum of One Hundred Pounds by them, or some
 “ of them paid, did hire a Ship to transport them-
 “ selves and the said Bills of Exchange, Letters,
 “ Notes, Memorandums and Instructions into
 “ Parts beyond the Seas; to and among their
 “ Majesties Enemies: And did also prepare a
 “ Boat to carry them to the said Ship; and did
 “ enter into the said Boat, which carried them to
 “ the aforesaid Ship; with the Bills of Exchange
 “ and Papers aforesaid. And being on board the
 “ said Ship, did sail towards *France* with the said
 “ Bills and Papers, with an Intent to disperse
 “ them, and accomplish their said Treasons.
 “ And the Indictment further sets forth, That
 “ long before the said 29th of *December*, there
 “ had been an open War between our said Lord
 “ and Lady the King and Queen, and *Lewis* the
 “ *French* King and his Subjects; and the Men of
 “ those Parts then, and yet Enemies to their said
 “ Majesties; and that the Prisoners being Sub-
 “ jects of our said Lord and Lady the King and
 “ Queen, during the War aforesaid, *viz.* the
 “ 29th Day of *December*, in the 2d Year of their
 “ Majesties Reign, and divers other Days and
 “ Times as well before as after, at the Parish of
 “ of *St. Clement Danes*, in the County aforesaid,
 “ were traiterously adhering and assisting to their
 “ said Majesties Enemies; and in Execution and
 Per-

“ Performance of the said Adhesion, did prepare
 “ and compose such Notes, Instructions, &c.
 “ *prout autea*. And also did procure and conceal
 “ such Bills of Exchange, Notes and Papers; and
 “ did hire such Ship and Boat, to carry themselves
 “ and Papers into *France*, and did go on board the
 “ said Ship and sail for *France*; with Intention to
 “ aid and assist their said Majesties Enemies in
 “ Council and Intelligence, by those Notes, Bills
 “ of Exchange and Instructions, &c. *prout autea*,
 “ against the Duty of their Allegiance, their Ma-
 “ jesties Peace, &c.

Page 859.
 The same O-
 vert Acts laid
 as to prove
 the other
 Treason.

Clerk of the Arraignment. How say you, Sir Rich.
 Grahme, Are you Guilty of this Felony and High
 Treason whereof you stand Indicted, or Not
 Guilty?

Lord Preston. I find I stand Indicted by the
 Name of Sir Richard Grahme, Bart. But I take
 my self to be intituled to another way of Tryal, as
 being a Peer of *England*, by Virtue of a Patent,
 before the Vote of Abdication was made: And it
 was at a Time, when all your Processess and Writs
 run in the late King's Name, and all Officers acted
 by Virtue of his Commissions. And therefore I
 desire to know, Whether your Lordships think
 fit to allow me my Peerage?

Lord Preston
 objects to his
 being Try'd
 in this Court,
 that he was
 made a Peer
 before the
 Vote of Ab-
 dication.

L. C. J. My Lord, You must make it out that
 you are a Peer, to the Court.

Lord Preston. My Patent is in the Hands of the
 House of Lords.

L. C. J. If your Lordship plead that you were
 made a Peer, by a Patent under the Great Seal of
England, you must produce it under the Great
 Seal.

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He is told he
 must produce
 his Patent.

Lord Preston. I hope the Court will enable me
 to do that, by sending an Order to the Clerk of
 the House of Lords to bring the Patent, for it is
 in his Hands.

L. C. J. That is not in our Power. If your
 Lordship take your Self to be a Peer, and would
 thereby stop this Court from proceeding to Try
 you, you must be ready to make it out: Nor are
 we to enable you to plead to the Jurisdiction of
 the Court.

Lord Preston. I desire my Council may be heard to this Matter.

L. C. J. I know your Lordship has had the Benefit of Council, and they must tell you, that what you say, goes for nothing, unless you put in your Plea, and produce your Patent, that the Court may judge of it.

And that when he claim'd his Peerage in the House of Lords, they refus'd his Claim.

Sol. Gen. Upon the 11th of *November*, 1689, my *Lord Preston* did make some Claim in the House of Lords, that he was a Peer of this Realm, by Virtue of Letters Patents from the late King *James*, which pass'd the Great Seal before the Time of the Vote of Abdication; which Letters Patents being produc'd, and my *Lord Preston* insisting on his Claim, the Lords thought fit, that Day, to commit him to the Custody of the Black Rod. And the next Day, being the 12th of *November*, upon solemn Debate of the Validity of these Letters Patents, and Consulting with the Judges then present, the Lords, *Nemine Contradicente*, did adjudge and declare those Letters Patents to be Void and Null, and did order Mr. *Attorney* to prosecute my *Lord Preston* in the *King's-Bench*, for a high Misdemeanour, in presuming to claim Peerage by those Letters Patents; and it was also order'd, that the said Letters Patents should remain in the Custody of the Clerk of the Parliament. And upon the 27th of the same Month of *November*, upon my *Lord Preston's* humble Submission and Petition, and disclaiming any Right to Peerage, his Lordship was discharg'd of his Imprisonment; and the House of Lords were pleased to remit the Order given to Mr. *Attorney* to prosecute him for the Misdemeanour. And this Matter having already thus receiv'd a Solemn Determination, in a Court which had the most proper Conuzance and Jurisdiction of Claims of this Nature, I did not think it would have been urg'd again in this Place. But here is nothing offer'd by my Lord, that the Court can take any Legal Notice of. And if my Lord would plead to the Jurisdiction of the Court, he ought to have his Plea in Form, and be ready with his Proofs to make it good.

And that his Lordship had disclaim'd his Right to Peerage there.

That where one pleads to the Jurisdiction of the Court, his Plea must be in Form, and he must be ready to make it good.

L. C. J.

L. C. J. My Lord, You have offer'd nothing that we can take Notice of, unless you had your Patent to produce; and we cannot give your Lordship Time to plead to the Jurisdiction of the Court.

My Lord Chief Justice *Pollexfen*, the Lord Chief Baron, and Mr. Baron *Lechmere*, declared they were of the same Opinion.

Then my Lord *Preston* desir'd the Indictment might be read in *Latin*; and because he could not retain all the Contents in his Memory, he desir'd Leave for his Solicitor to stand by him.

L. C. J. *Pollexfen*. Do you all join in this Desire? for if you should each of you, severally, have it read, they that take Notes in Short-hand, may take a Copy of it as it is read, and a Copy is not to be allow'd.

Mr. *Ashton* and *Elliot*. We join with my Lord, and desire it may be read in *Latin*.

Then the Indictment was read in *Latin*; after which, my Lord *Preston* desir'd to have a Copy of it.

L. C. J. We cannot do it; That has always been denied.

Lord *Preston*. There is a Statute in the 46th of *Ed. 3.* that doth order a Copy of any Record to any Prisoner, or other Person, if he demand it; and I am inform'd, it has been granted in other Cases, particularly Col. *Sidney's*.

L. C. J. No, my Lord, it was denied in Col. *Sidney's* Case.

Lord *Preston*. It was given as a Reason for the Reversal of Mr. *Cornish's* Attainder, that it was not a legal Tryal, because he had not a Copy of his Indictment.

L. C. J. That is but a private Act; I never saw it, nor can we take Notice of it: Your Lordship is to be Try'd by the same Methods of Law, that all Persons that have gone before you have been: It has not been the Course to allow a Prisoner a Copy of his Indictment. It was deny'd both to Col. *Sidney*, and Sir *Henry Vane*.

Lord *Preston*. Was it not granted in the Case of my Lord *Russel*?

L. C. J. No, my Lord *Russel* had it not.

Lord

The Indictment read in *Latin* at the request of the Prisoners, but a Copy of it denied.

The Court can take no Notice of a private Act of Parliament.

Lord Preston. May I not have Council heard, Whether I ought to have a Copy of my Indictment, according to the 46 Ed. 3?

L. C. J. There is no such Statute, that gives the Prisoner a Copy of his Indictment.

Mr. Jones. If your Lordship please to hear me for my Lord Preston?

The Court refuse to hear Council before their being assign'd.

L. C. J. Nay, Mr. Jones, you are mistaken in this Matter: If my Lord himself will shew that there is any such Statute, we will consider of it; and if it be a Matter that requires Debate, we may assign Council to argue it; but till then, Council are not to be heard. If your Lordship can shew us that Statute, pray do?

Lord Preston. I suppose my Solicitor is here with it.

My Lord produces a Statute of 46 Ed. 3. which says, a Copy of any Record shall be allow'd to all Persons.

Mr. Solicitor. My Lord, This Statute of the 46 Ed. 3. is printed at large, in the Preface to my Lord Coke's 3d Report, and has been insisted on in several Cases in the *King's-Bench*, where the Prisoner has desired a Copy of his Indictment; but a Copy has been always denied, and this Statute has been taken to extend only to Records, which may be Evidence for the Subject.

But is told, that is only meant of Records that may be Evidence for the Party.

L. C. J. That Statute says, that all Persons shall be free to make use of the Publick Records, and take Copies of them; because, oftentimes, the Records are Evidences of Mens Estates and Titles: But an Indictment is not such a Record, as is within the intent of the Act.

Lord Preston. There is a Statute, that says it shall be allow'd to all Persons to have Copies of Records, as well for, as against the King: And those I have advised with, do say that the Statute is express.

L. C. Baron. If any doubtful Words be in such Statute, yet the constant Practice must expound it; the Law is now settled, That it is not within the Meaning of that Statute.

L. C. J. See the 46 Ed. 3. Read it.

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Chief Justice Pollexfen affirms it was not reasonable a Prisoner should have a Copy of his Indictment.

L. C. J. Pollexfen. It is not printed, and 'tis mention'd no where but in my Lord Coke's 3d Report, that I know of; and whether there be such a Statute, *non constat*: And if all People were to have

have Copies of their Indictments to make Exceptions to them before they plead, instead of Days of Goal Delivery, the whole Year would not be sufficient, but would be spent, before they could be brought to Tryal.

Lord *Preston*. My Lord, I am to defend my self as I can, by Law, and not to consider what other Peoples Cases are. It is my particular Case now; what the Case may be, as to another hereafter, or what the general Consequence may be, is not to be consider'd. There is such a Law, it is not printed indeed, but here is a Copy of that Record in Court.

Then Mr. *Whitacre* was sworn, and depos'd, that the Copy produc'd, was a true Copy of the Record which he had examin'd at Mr. *Pettyt's* Office in the *Tower*.

Clerk Reads. *Item pria les Commons, &c.*

L. C. J. Your Lordship hears by this Record, it is only meant of those Records that are to be given in Evidence, and does not reach your Case.

Ld. *Preston*. My Lord, this Indictment is a Record, and, I think, it is given in Evidence against me.

Just. *Eyres*. The Witnesses are sworn that testify the Matter of it to the Grand Jury; but the Indictment it self is no Evidence.

Lord *Preston*. Will your Lordship please to allow my Council to be heard to it?

L. C. J. No, my Lord, Not Council in a plain Case, as I take this to be.

Lord *Preston*. My Lord, Here is a Doubt in this Case.

L. C. Baron. But it is not the Doubt of the Prisoner, but the Doubt of the Court, that will occasion the assigning Council.

L. C. J. *Pollexfen*. Shall we admit Council to debate a Thing that has been in all Ages denied, and never admitted so much as once? that cannot be expected from us.

L. C. J. I suppose we are all of the same Opinion.

Lord *Preston*. My Lord, I submit to the Court; but I take leave to represent, that I have had very short

A Copy of the Statute taken from the Records in the *Tower*, was read. Rul'd that it did not reach this Case.

Council not to be allow'd to argue a Point of Law, unless the Court be in doubt as well as the Prisoner.

short Notice of my Tryal, not above six or seven Days ; I hope you will not refuse me a little longer Time.

L. C. J. My Lord, Seven Days is very fair Notice.

Mr. Ashton. My Lord, Three Days of the Seven, we had not the Liberty of seeing any Friend, or Council ; and then, indeed, with great Application and Charge, we did get an Order for our Council to come to us ; but we never had a Copy of our Jury to this Minute.

L. C. J. We debate the Time of your Tryal too early, for you must put your self upon your Tryal first, by pleading.

Lord Preston. Will your Lordship give me leave to move it afterwards ?

L. C. J. It will be proper to do it then.

Lord Preston. One Reason my Tryal ought to be put off, is, because I have the Privilege of excepting against so many of my Jury ; but if I have not Time to look into the Pannel, I shall loose that Privilege.

Then my Lord *Preston* pleaded *Not Guilty*.

Mr. Ashton. My Lord, I have only this to offer, besides what my Lord *Preston* has offer'd : I am told, that if the Indictment be faulty, but in a Letter, we cannot be found Guilty upon that Indictment. Now, If we never have a Copy of that Indictment, how shall we know whether there be such Fault in it ? And your Lordships, who are Council, by Law, for us, I suppose have never seen the Indictment, nor you will allow us no Council to look into it. Then suppose there be Forty Faults in it, how shall we come to have any Advantage by them.

L. C. J. Never was Council allow'd to pick Holes in an Indictment ; but if you shew us any Reason, we may assign you Council to debate any Matter of Law that may arise ; and when you come to your Tryal upon the Indictment, if there be any Thing considerable, you are to suppose we shall observe it for your Advantage.

Mr. Ashton. My Lord, I desire we may have a Copy of the Pannel.

L. C. J.

Not regular
to move to
put off the
Tryal before
Plea pleaded.

Lord *Preston*
pleads *Not*
Guilty.

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L. C. J. You must plead first.

Then Mr. Ashton and Mr. Elliot pleaded severally Not Guilty, and my Lord Preston mov'd again for Time for his Tryal, and a Copy of the Pannel.

Mr. Ashton and Mr. Elliot plead Not Guilty.

L. C. J. To put it off till the next Term, is to remove it out of this Court; that we cannot do: And to put it off till after the Term, will be too long a Time.

Lord Preston. My Lord, This Term is always a short Term; and if I be Try'd to Morrow, it is Trying me without giving me Time for my Defence.

The Prisoners move to put off the Tryal.

Sol. Gen. My Lord, All the Care has been taken that the Nature of the Thing is capable of, to prevent any Complaint of this kind; but if the Court are pleased to put it off till to Morrow, we are contented; but there can be no Reason to put it off for a longer Time. I would always have a Tenderness us'd towards People in these Circumstances; but if the Accusation against these Gentlemen be true, the Government is highly concern'd to bring this Matter to a speedy Examination. As to what is said of Time, to inquire about the Jury, there is a reasonable Time between this and to Morrow, for making such Inquiry as is fit and justifiable to be made; but if by Time to look into the Jury, be meant a Time for tampering with them, that, I am sure, your Tenderness of the Government will not permit.

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Lord Preston. My Lord, 'Tis a very hard Presumption, that our asking a Copy of the Pannel, is with a design to tamper with the Jury. If I am to be Try'd to Morrow, I am willing to be Try'd to Day; for I am as ready now, as I shall be then.

They urge, that those hasty Proceedings in the last Reign

L. C. J. It may be so, and as ready as you will be after the Term: But I know not what your Lordship means by expressing such Resentment, that because you can't have what Time you would, therefore you will have none, but be Try'd now.

were condemn'd, and given as a Reason of King William's coming over, in one of his Declarations.

Mr. Ashton. My Lord, It is a weighty Concern, and all such hasty Proceedings were thought very hard in the late Times, and particularly, the denying

Mr.

Mr. *Cornish* Time: And 'tis one of the Reasons in this King's Declaration, for his coming into *England*, The Hardships that the Law laid upon Men in their Tryals, which he came to prevent.

L. C. J. Pollexfen. The Hardship that was upon Mr. *Cornish*, was, That he was taken off from the *Exchange*, when he was about his Business, and Try'd before that Day Se'night. Whether you were about your lawful Business when you were taken, God of Heaven knows? And when Men are plotting against the Government, to give them Time to carry on their Plots, will be mischievous on that Side.

Mr. *Ashton.* Till that be legally prov'd, it is but a Supposition.

L. C. J. We are to suppose you not Guilty, till you are proved Guilty.

That the Benefit the Law gave them of excepting to the Jurors, was to no Purpose if they had not Time to enquire after them.

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Mr. *Ashton.* Then, my Lord, the Law says, We may except against so many Persons: What is the End of giving us a Copy of the Pannel? 'Tis not to be presum'd we can do it by their Faces: We must enquire concerning the Men, and that is a Work of Time. Is it possible for me before To-morrow Morning Eight o'Clock, to enquire into the Lives of Thirty Five Men, and what Religion they are of?

L. C. J. Suppose they are all Strangers to you, and yet good and lawful Men of the County, and there be no Difference between you and them, then they are fit to try you?

Lord *Preston.* There is another Point to enquire of them, and that is, Whether they are Freeholders or not?

Mr. *Ashton.* I hope you will allow us till *Monday* for our Tryal.

L. C. J. Pollexfen. The Court can sit no longer than *Monday*, and when that Day comes, perhaps it will not serve to go through with the Tryal, and then it must be adjourn'd till after the Term; and in the mean while some are in hopes the King of *France* may come and determine the Matter.

Mr. *Ashton.* Pray, my Lord, Let no Suggestion against us prepossess the Opinion of the Court before we are try'd.

L. C. J.

L. C. J. It is observ'd by the King's Council, that they are Things of very great Consequence, and therefore they press for the Tryal; and the Want of Witnesses is only a Surmise; shall we put off a Tryal upon a bare Suggestion of Want of Witnesses? Sure that was never done; you must prepare for your Tryal To-morrow.

A Tryal never put off on a Suggestion of Want of Witnesses without Oath.

Time given till next Day to prepare for Tryal.

Lord Preston. Will your Lordship please to let our Council and our Friends come to us.

L. C. J. Yes. You shall have all that's necessary for your Defence, that we can allow you; but unnecessary Delays must be avoided.

Then the Prisoners were remanded to Newgate. Saturday the 17th of January, 1690. The Court being sat, and those Persons who were return'd for Jurors being call'd over twice, and their Appearances Recorded, the Prisoners were brought to the Bar.

The Prisoners brought to the Bar in order to their Tryal.

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The Prisoners declaring they would challenge severally, they were order'd to be try'd apart, and it was not permitted Mr. Ashton to be present when my Lord was try'd: Afterwards the Court was inform'd, that Mr. Elliot desir'd to be try'd with my Lord; but the Court said, Unless they would all join they must be tryed severally: Then Mr. Ashton and Elliot were carried back to Newgate, and the Lord Preston was directed to look to his Challenges.

They refusing to join in their Challenges, are ordered to be tryed separately.

Several that were summoned were excused, upon making Oath they had no Freehold in the County of Middlesex, in their own or their Wife's Right.

The Lord Preston comes up on his Tryal first.

Joseph Denson, Esq; was challeng'd for the King; as was Mr. Paget also.

Juror's discharg'd for Want of Freehold.

Lord Preston. Must they not shew Cause?

L. C. J. By and by; if there be not enough, they shall shew Cause.

The King not to shew his Cause of Challenge, till the Pannel is gone through.

Lord Preston. I desire I may have Council to that Point.

L. C. J. Shall we assign Council to dispute Matters not disputable? If your Lordship pleases you shall have the Book to read, that the King is not bound to shew Cause 'till the Pannel is gone through.

Lord

Lord *Preston*. Then I don't insist upon it.

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Twelve Jurors being sworn, the Indictment was repeated again in *English*, and they were charg'd with the Prisoner; and Mr. *Knapp* open'd the Indictment; and Mr. *Sollicitor* shew'd the Nature and Course of the Evidence.

Then Mrs. *Pratt* was Sworn.

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Mrs. *Pratt*'s Evidence of Hiring a Vessel of her to go to *France*.

Serj. *Tremain*. Mrs. *Pratt*, Pray tell what you know concerning the Hiring of a Vessel, who hir'd it, and whither it was to go.

Mrs. *Pratt*. Mr. *Burdett* sent for me to hire my Smack to go for *France*; I came several Times to Mr. *Burdett*'s House about it; and Mr. *Ashton* afterwards met me there, and gave me a Note to meet him at the *Dog Tavern* on *Ludgate-hill*. On *Monday* I met him there, and sat with him an Hour and an half, but did nothing: Then he appointed me to meet him the next Day at Mr. *Burdett*'s, at Seven or Eight o'Clock, and there we met; I asked 150*l.* and Mr. *Ashton* said he would give me 80*l.* Says Mr. *Burdett*, Pray encourage them; offer them 100*l.* and we agreed for 100*l.* Mr. *Elliot*, Mrs. *Burdett*, and the Master of the Vessel, were present at the Agreement; and there was a Six-Pence broken, and Mr. *Burdett* directed Mr. *Ashton* to give his Wife one Part, and so he did; and my Master was to bring back the other half of the Six-Pence, which Mr. *Ashton* had, to Mrs. *Burdett*, and then we were to have the 100*l.* and Mr. *Ashton* said we should see the Money told out and paid to Mrs. *Burdett*, and he brought it wrapt up in a Paper, and told it out there; it was Ninety Three Guineas and the Six-Pence; and we fetch'd a Hamper and a Trunk from Mr. *Burdett*'s House, my Man *John Fisher* carried the Trunk, and a Porter carried the Hamper, and I took Care to see them put into the Vessel. Mr. *Ashton* bid Mr. *Elliot* write a Note where we should come for them, and we were appointed to come to Mr. *Rigby*'s, at the *Seven Stars* in *Covent-Garden*, about Eleven at Night: We found Mr. *Ashton* there, and he went out and fetch'd Mr. *Elliot* and two other Gentlemen that I never saw before; and Mrs. *Ashton* came in, and said she was afraid we should have

no very good Luck, for the Cock crowed: And they said, If they went safe this Time, they would help us to the Earning of 1000*l.* before *Lady Day*.

Serj. *Thomson*. How did they go away from Mr. *Rigby's*?

Mrs. *Pratt*. They went away about Eleven at Night, I did not go with them. Mrs. *Ashton* kept me, and gave me the Leg of a Goose and some Drink.

Lord *Preston*. I desire she may be ask'd if she ever saw me before.

Mrs. *Pratt*. No, Never, my Lord, but in the Tower.

Pasely, Master of the Smack, was called.

Serj. *Thomson*. What do you know about Hiring this Smack to go to *France*.

Pasely. The Smack was hir'd of Mrs. *Pratt*, and when I came up to *London*, she told me she had got a Voyage over to *France*, and desir'd me to go with her to Mrs. *Burdett's*, where we met Mr. *Ashton* and Mr. *Elliot*, who told us their Things would be ready presently to carry on Board; and *John Fisher* carried the Trunk, and the Porter carried the Hamper, and I went with them to *Billingsgate*, and carried them on Board, and then we return'd to Mr. *Burdett's* House, where Mr. *Ashton* and Mr. *Elliot* came in again, and said to my Owner and me, You shall see the Money told: It was all in Gold but one Six Pence; there was Ninety Three Guineas; and after the Money was told, a Six-Pence was broke in half, and the Guineas were roll'd up in a Paper and given to Mrs. *Burdett* to keep; and Mr. *Ashton* gave her one half of the Six-Pence, and kept the other himself; and when my Owner or I should bring the half that he had, Mrs. *Burdett* was to give the Money to her or me: This was at Mr. *Burdett's*, in a Bed-Chamber on the Left Hand going in, about Eight a Clock at Night: Then they directed us to meet them at the *Seven Stars*, in the *Little Piazza* in *Covent-Garden*; whither we went about Eleven a Clock that Night, and Mr. *Ashton* and *Elliot* came in, and two Gentlemen more, and they discours'd about Papers shaking in a Hat, and said

The Evidence of Mr. *Pasely*, Master of the Smack, of Hiring the Vessel, and their going on Board, and sailing down to *Gravesend*.

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they should have no good Luck for the Cock crow'd : And when we came out of the House, Mr. *Ashton* left us, and Mr. *Elliot* bid me go along with him. We came to *Surry-Stairs*, and going down he call'd at the Corner House, which is an Ale-house, for the Waterman, and bid me go before to the Water-side : By that Time I was seated in the Boat, came down Four Men, viz. Mr. *Ashton*, Mr. *Elliot*, my Lord, and his Man ; we went Through-Bridge, and went on Board the Vessel, which was riding over against the Tower ; we hawl'd up the Anchor, but there being but little Wind we could not go far, and I dropt Anchor just below the *Half-way Tree* : Next Morning about Eight we weigh'd Anchor again, and went on till we came to the *George* Man of War, and there they desir'd to be hid ; and they were hid under the Quarter-Hatches, all four of them ; they could not sit upright there, but were forc'd to lie along : After we were pass'd the Man of War, they came up again ; and when we came over against the *Block-House* at *Gravesend*, they would hide again ; and when we had pass'd the *Block-House* they were coming up, but seeing a Boat coming towards us they went in again, and the Hatches were laid down upon them, and there they remain'd till they were taken. After they were taken, Captain *Billop* order'd them to go into the Boat, and us with them ; and when we came to *Whitehall-Stairs* one of them said to me, Master, When you come upon your Examination, say you were bound to *Flanders* and not to *France* ; and *Elliot* gave me Half a Crown to bear my Expences that Night, and said he would remember to take Care of us afterwards : *Ashton* too gave one of my Men Half a Crown, and bid him say he was bound for *Flanders*, and not for *France* ; and my Lord's Man gave my other Man half a Crown : My Lord was upon the Bridge, but not near us, when the Money was given us.

L. C. J. Pollexfen. Whereabouts is *Burdett's* House ?

Pasely. That is in *Queen-street*, in the City.

Serj.

Serj. *Tremain*. Did the Waterman that brought them on Board leave two Coats behind him?

Pafely. Yes, The Waterman did leave two Coats, and I put them into my Chest; and afterwards they broke open my Chest, and brought them to my Lord Chief Justice's.

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Then *Charles Betsworth*, the Waterman, was call'd

Betsworth. I was going over the Water from *Surry-Stairs*, about Seven or Eight a Clock, and a Gentleman at the Stairs call'd Skuller, and ask'd me if I would carry him down the River as far as the Tower, and said he would wait till the Tide was turn'd; and I said, if I was out of my Bed so long he should give me half a Crown, which he agreed to; so I waited for him at an Ale-house by the Stairs; and about Eleven a Gentleman call'd me, and there was another with him, and I took them into my Boat, and by and by came three more into my Boat; one of them had a whitish Cloak on, and another a grey loose Coat, and a red Bag of the Quantity of a Peck; so we put off, and came Through-Bridge, and the Man that was in the Stern, said the Vessel lay on the South-ward Side over-against the Tower; so they were put on Board, and as soon as they were on Board she went off; she had a Pennant up then, and when I return'd Through-Bridge with my Boat, I miss'd my Cloaths, and there being little Wind and a still Tide, I thought I might overtake them; so I came down to the Place where the Smack lay, and she was gone; I follow'd them to *Blackwall* and *Limehouse-Reach*, and enquir'd for the Smack, but could not hear of her; so I row'd on further, till I came to *Barking-Sherf*, and there waited to see a Smack coming down with a Pennant; for there being little Wind, I thought none could be gone beyond me; but I could not meet with it, and there I lay all Night in my Waistcoat, and next Day I came back, but could not hear of my Cloaths, till last Friday Seven-Night, two Watermen came and brought me my Cloaths.

Betsworth, the Waterman's Evidence who carried them on Board.

Serj. *Tremain*. Is this the Waterman who brought you on Board, Mr. *Pafely*.

K 2

Pafely.

Pafely. Truly I can't tell, but the Waterman's Coat was left on Board.

Serj. Tremain. Had you a Pennant?

Pafely. Yes, I had when they came on Board; but they bid me take it in.

Then *John Fisher* was call'd.

Fisher, the Seaman's Evidence of their coming on Board.

Serj. Tremain. You was one of the Seamen that belong'd to the Smack? Pray tell us who were brought thither, and what happened upon it.

Fisher. About Six Hours before they came on Board, our Master carry'd me to a House in the City, and there gave me a small Trunk to carry, and gave a Hamper to a Porter, and we went away with them, and at *Billinggate* he bid us carry them a Board, which we did; and between Eleven and Twelve, my Lord, and Mr. *Ashton*, and Mr. *Elliot*, and my Lord's Man, came on Board, and immediately our Master order'd us to hawl up the Anchor. Now there was but little Wind, and by that Time we were fallen down as low as the *Half-way-Tree*, it being still Flood, we could go no further, so we lay by till Morning, and about Eight we weigh'd Anchor again; and about Nine, when we came to the *George Man of War*, they desir'd to go down into the Quarters to hide, and we laid the Hatches upon them: I understood nothing till they hid, and then I thought we were going to *France*. Then he goes on, and gives the same Account of their being taken, as the Master had done.

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Amonds gives the same Account, and adds an Account of Captain *Billop's* taking a Packet of Papers out of *Ashton's* Bosom.

Amonds, another of the Seamen, was Sworn.

He gave the same Account of their coming a Board and Hiding, that *Fisher* had done; and added, that when Captain *Billop* took them, he search'd my Lord's Pockets, and took out some Papers which he put into his own; that he gave my Lord his Watch again, and said he would meddle with nothing but Papers: And then he search'd Mr. *Elliot* and Mr. *Ashton*, and that one of the Watermen told the Captain he saw Mr. *Ashton* put something in his Bosom; and the Captain put his Hand into Mr. *Ashton's* Bosom, and pull'd out a Roll of Papers with a Piece of Lead tyed to it.

Serj. Tremain. Had you any Money given you?

Amonds.

Amonds. My Lord's Man gave me half a Crown in *Whitehall*, and bid me say We were bound for *Flanders* and not for *France*, but who the Half Crown came from I cannot tell; my Lord said nothing to me at all.

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Captain *Billop* was Sworn.

Serj. *Thomson*. Pray tell the Court where you apprehended my Lord *Preston*.

Capt. *Billop*. Upon the last of *December*, about Two a Clock, my Lord *Danby* came to me at one of the Doors of the House of Lords, and told me his Father would speak with me, and he carried me to my Lord *Lindsey's* Chamber, whither my Lord *President* presently came, and told me there were some Persons going for *France* about Business of dangerous Consequence, and desir'd me to use some Means to have them apprehended; and he gave me a Letter to another Person who was to instruct me further about this Matter: My Lord *Danby* got me a Boat ready and some Arms in it, and I borrow'd more of my Lord *Lucas*. About Eleven a Clock we put off from *Tower-Wharf*, and run down as far as *Gravesend*, and I brought several Vessels under my Lee, and press'd out of them Two or Three *Barking* Men, one of whom knew all the Vessels in the River, and seeing this Vessel sailing along, he told me it was the *Thomas* and *Elizabeth*; whereupon we made up to them, and waving our Hands they stay'd for us; I went down into the Cabin and took up the Hatches, and there I found all four of them lying together. Mr. *Elliot* and *Ashton* were my former Acquaintance, but my Lord *Preston* I had forgotten, till one of them call'd him my Lord; I handed my Lord *Preston* up first, and search'd him, and took all the Papers I could find, and put them into my own Pocket; then I search'd Mr. *Elliot*, but found nothing upon him; and when Mr. *Ashton* came up, one of my Men told me he had put something in his Bosom; whereupon I gave him a sudden Turn and ask'd what it was; he said, Nothing but his Handkerchief, and pull'd out his Handkerchief, and I clapt my Hand into his Bosom, and pluck'd out the Packet with the Lead fix'd to it, (I have the Lead now in my

Capt. *Billop's* Evidence of his apprehending the Prisoners, and taking the Packet out of *Ashton's* Bosom.

Pocket.) I commanded these Gentlemen all into my Boat, and took all the People that belonged to the Smack with me, and left Two of my Men on Board her, and ordered them to search all Parts of the Vessel, and carry what they found to the Tower to my Lord *Lucas*.

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Serj. *Tremain*. What Discourse had you with these Gentlemen in your Boat?

Capt. *Billop*. My Lord *Preston* desir'd they might go ashore at *Gravesend* to refresh themselves, because they had eaten nothing and it was cold, and I begg'd his Pardon, and told him there was a Man of War lay in *Long-Reach*, where he might be accommodated: Mr. *Ashton* and Mr. *Elliot* telling my Lord I was of their Acquaintance, he said he was glad he was fallen into the Hands of a civil Gentleman; and he said if ever it lay in his Power to do me Service he would, and he did not doubt but it might, and used a great many Expressions of Kindness and Readiness to do me Service, if I would dispose of the Packet; and Mr. *Elliot* and *Ashton* courted me to throw the Packet Over-board; and one time particularly Mr. *Ashton* said, It would be a generous Thing, *Billop*, if you would go along with us you may do as well there as here; and *Mun Elliot* whisper'd me several Times, Dear *Billop*, Throw the Packet Over-board, What Good would it do you to injure so many honest Gentlemen? And Mr. *Ashton* and *Elliot* said, I had it now in my Power to make my self as great and as rich as I would be; and *Mun Elliot* said, It was impossible the Tide could run always this way, and when nothing would prevail, they said, Every Dog had his Day.

And their desiring him to throw the Packet Over-board.

Serj. *Thomson*. What did you do with the Papers?

Billop deposes, he deliver'd the Packet with a Lead fix'd to it, to my Lord *Nottingham*.

Capt. *Billop*. I brought these Gentlemen to my Lord *Nottingham's* Office, and deliver'd the Packet with the Lead fix'd to it, and stood by my Lord *Nottingham* 'till he had opened the Papers, (except when my Lord *Preston* was examin'd) and see him make them up again, and I took some of them in my Hand, and he said I might read them, but

but I was not disposed at that Time to read many of them; so I did not read them all.

Lord *Preston*. I desire to know where it was, I said to Captain *Billop*, that he would dispose of the Packet.

Capt. *Billop*. It was just after I first saluted your Lordship, and you said you were glad you were fallen into the Hands of a civil Gentleman; it was in the Boat, before we came on board the *George Frigate*.

Lord *Preston*. Did you see the Papers opened?

Capt. *Billop*. Yes, and my Lord as he opened them laid them one by one, and read them and put them up again; and he tied them with a Piece of Twine and clapt his Seal upon them, and delivered them to me; and I went and deliver'd them immediately to my Lord President.

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Lord *Preston*. Can you swear that these are the same Papers that were taken on board the Smack, that you carried from my Lord *Nottingham* to my Lord *Danby*.

Capt. *Billop*. So many as I lookt into I mark'd, and all that I mark'd I can swear to, and no more.

Fury-man. I desire to know if the Papers were sealed when he took them and brought them to my Lord *Nottingham*.

Capt. *Billop*. No, they were all tied up together, with a Tape or a Twine; I think with both, very fast together; but there were several Letters within the Packet that were seal'd I deliver'd them to my Lord *Nottingham*, as I took them from Mr. *Ashton*, without opening the Packet.

Then *Johnson* was set up.

Serj. *Tremain*. Pray tell us what you know of this Matter.

Johnson. I was in my Lord *Dunblain's* Barge, and went down with this Capt. *Billop*: When we had rowed down as far as you have heard, we rowed up again; and search'd several little Vessels and Smacks: And when a Fisher-man that we had press'd, said that that was the Vessel the Captain enquir'd after, the Captain bid us take some small Arms, and I took a Pistol and went aboard: The Captain read their Protection, but said he must

Johnson's Evidence of their apprehending the Prisoners, and the Packet with my Lord's Seals lying on the Ballast where they were taken.

look further; and when he lookt into one of the Cabbins and took up the Hatches, I saw a great Piece of Roast-Beef, and my Lord *Preston* by it, and a Mince-Pye and a Fowl, and my Lord and his Man and Mr. *Elliot* came up; and when Mr. *Ashton* came up, he went down again and pretended to look for his Hat, but I saw him cram something into his Bosom and I told the Captain of it, and the Captain took him by the Buttons and turn'd him round, and ask'd what he put into his Bosom? He said, nothing but his Handkerchief; and pulling it out of his Bosom, shew'd it the Captain: But the Captain put his Hand into Mr. *Ashton*'s Bosom and pull'd out the Packet: Mr. *Ashton* took it off the Gravel, and there were a Couple of Seals lying by it, and I believe he forgot the Seals.

Serj. *Tremain*. Are these the Seals Captain *Billop*.

Capt. *Billop*. Yes, these are the Seals this Man gave me.

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Johnson. I took them off the Ballast. When we came to *Long-Reach*, Mr. *Elliot* cut off his Whiskers with a Pair of Scissars: And when we came on board the *George* Frigate my Lord's Man came to me, and said he would give me something to drink if I would deliver him the Seals; but I deliver'd them to Captain *Billop*.

Serj. *Thomson*. What did they say as they went along?

Elliot wishes the Bridge might fall on them.

Johnson. *Elliot* wish'd that a Thunder-Bolt might drop into the Boat and sink it; and when we went Through Bridge against Tide, he wish'd that *London-Bridge* might have fallen on our Heads.

Lord *Preston*. I perceive there seems to be some Strels laid upon my lying next to Mr. *Ashton*, and my Seals lying by the Packet; it is in vain to deny we were all together, but it is a very hard Presumption, because we were in one Place, and the Seals at a little Distance from the Packet, that therefore the Packet must be mine.

L. C. J. It is only a circumstantial Evidence; how far it will weigh is to be left to the Jury when all the Evidence is heard. The Packet is found in the

the Place where your Lordship lay, and by it Seals that belong to you: One is the Seal of your Office, as Secretary of State; the other is your own proper Coat of Arms.

Fury-man. Did *Johnson* see Capt. *Billop* take the Packet out of *Ashton's* Bosom, and did he see the Captain deliver it to my Lord *Nottingham*?

Johnson. I saw him take it out of *Ashton's* Bosom, but I did not see the Captain deliver it to my Lord *Nottingham*.

The Earl of *Nottingham* was Sworn.

Earl of *Nottingham.* All I have to say in this Matter is, Capt. *Billop* brought me a Bundle of Papers tied with a Packthread, to which was fix'd a Piece of Lead, I believe the same that is now produc'd; and this I presume, is the Signet which he shew'd me: The Papers, when he deliver'd them to me, I open'd in his Presence, and when I had read them, I put them all up together again and Sealed them with my Seal, and deliver'd them to him back again.

Lord *Nottingham* deposes, he deliver'd all the Papers in the Packet back again to Capt. *Billop*.

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Serj. *Thomson.* Were the Papers out of Capt. *Billop's* Sight while your Lordship had them?

Earl of *Nottingham.* Not after they were open'd. Capt. *Billop* went out while I examin'd my Lord *Preston*, and left the Bundle lying on the Table; and after my Lord *Preston* was gone out, I call'd in Capt. *Billop* and opened the Packet in his Sight, and read the Papers, and he read some of them; and all that I receiv'd from him, I deliver'd to him, and no more.

The Marquis of *Carmarthen*, Lord President, was Sworn.

L. President. Capt. *Billop* brought me a Bundle of Papers, and said he brought them from my Lord *Nottingham*; and they were Seal'd with his Lordship's Seal: I shew'd them to the King next Morning, and the King deliver'd them back to me, having read some of them; and commanded they should be deliver'd to the Cabinet-Council. A Cabinet-Council was call'd, and I did deliver them Paper by Paper; and they were all mark'd by my Lord *Sidney*, and some, I think by my Lord *Marlborough*: So, I deliver'd them altogether to my Lord *Sidney*. My

Lord President says he receiv'd them of *Billop*, and deliver'd them to my Lord *Sidney*.

My Lord *Sidney* Sworn.

Lord *Sidney*
says he mark-
ed every Pa-
per, then gave
them to Mr.
Bridgman to
be copied

Lord *Sidney*. The Papers that were deliver'd by my Lord President, as soon as I had read them, I mark'd them with the Letter *H*, and have kept them ever since; only one Morning I gave them to Mr. *Bridgman*, to be copied out as soon as he could, and he deliver'd me them back again; and they have not been out of my Custody since, only the Night before last they were sent to Mr. *Solicitor* to read, and brought immediately to me again.

Lord *Preston*. From that Time they came out of my Lord President's Hands, I know not what may be put in, nor what taken out, these Papers were not Seal'd up as I hear of afterwards; and passing through so many Hands, no body knows what may be done to them: I think after all this, 'tis hard to swear these are the Papers that were taken aboard the Smack.

L. C. J. Capt. *Billop* says, he brought them to my Lord *Nottingham* as he took them out of *Ashton's* Bosom; my Lord *Nottingham* says he open'd them before him, and deliver'd all of them to Capt. *Billop* again after he had tied them up, and no more: And *Billop* says he carried them to my Lord President; my Lord President shew'd them to the King, and afterwards carried them to the Cabinet-Council: There the same Papers were open'd, and there they were mark'd, some by my Lord *Marlborough*, and all by my Lord *Sidney*.

Lord *Preston*. My Lord *Nottingham* says, he open'd no Papers 'till I was call'd in and examined, and then Capt. *Billop* withdrew: Now, I don't know how the Captain can say these were the very same Papers he took in the Smack.

Capt. *Billop*. My Lord *Preston* observes very right, that after I had delivered the Packet to my Lord *Nottingham*, I withdrew while my Lord was examin'd: But my Lord, the Packet was in the same Condition, upon the Table as I left it, when I came in again; I believe my Lord *Nottingham* had not open'd it.

Mr. *Bridgman* was Sworn,

Serj. *Thomson*. When you receiv'd the Bundle of Papers from my Lord *Sidney*, To whom were they carried? Mr.

Mr. *Bridgman*. My Lord *Sidney* gave me these Papers to be copied. I copied some of them with my own Hand, the others I deliver'd to Mr. *Poultney*, and they were copied in my Presence in the Office, they were never out of my Sight; and as soon as ever they were copied, I deliver'd them to my Lord *Sidney* again my Self; they were all mark'd by my Lord *Sidney* before I had them, and I am very sure I deliver'd them all back again unaltered.

Bridgman deposes, the Papers were copied in his Presence, and returned to my Lord Sidney.

Lord *Preston*. Were they Sealed up when you sent them to my Lord *Sidney*?

Mr. *Bridgman*. No, they were tied up when they were deliver'd me; I can safely swear they were never out of my Custody 'till I deliver'd them back again: And I remember, when my Lord *Sidney* receiv'd the Papers back again, he look'd over every one of them and read them, and look'd upon the Marks.

Lord *Preston*. Did my Lord *Sidney* Number the Papers?

Lord *Sidney*. No my Lord, I did not Number them.

Then a Paper was shewn my Lord *Sidney*.

Lord *Sidney*. That is my Mark, that Paper I know is one of the Papers.

Sol. Gen. The Paper we now offer is the Result of a Conference, there were Two of them taken in this Bundle, the one seems to be the first Draught, the other more fairly written; but I think they are in Effect the same.

Lord *Preston*. I desire before it be read, it may be shewn to Capt. *Billop*, to see if it be the very Paper that he took.

Capt. *Billop*. My Lord, I do not remember that Paper.

L. C. J. 'Tis true, he does not swear that this was one of the Papers; but the Question is, Whether all these Witnesses together do not prove it? You see all the Papers taken were delivered to my Lord *Nottingham*; all that were deliver'd to him, were sent back by him Seal'd, and deliver'd to my Lord President: My Lord President brought them all to the Cabinet-Council, and deliver'd them

them to my Lord *Sidney*; and this, my Lord *Sidney* says, is one of those Papers.

Lord *Preston*. I hope your Lordship will advise me, whether you think this a sufficient Evidence, of these Papers being taken in the Packet. They have been copied out, and sent from Hand to Hand unseal'd; and some of them, he that took them cannot swear to.

L. C. J. Certainly it is Evidence to have the Paper read; but the Question is, what Credit the Jury will give to this Evidence.

Lord *Preston*. But your Lordship will observe they were carried to the King; and they were in the Hands of the Lord *Marlborough*.

L. C. J. Not out of the sight of the Lord President.

L. C. Baron. Your Lordship should observe, where the defect of Proof is, and then it may be supply'd; for put it altogether, I don't see how there can be a plainer Proof given.

Then my Lord President was desir'd to look upon the Papers.

Lord President. This is one of the Papers I had from Capt. *Billop*, and shew'd the King, and which I brought to the Cabinet Council; and this is another of them.

Sol. Gen. My Lord, We desire this Paper may be read?

Clerk Reads. *The Result of a Conference between some Lords and Gentlemen, both Tories and Whigs, in which it was undertaken to prove the Possibility and Method of Restoring, by a French Power, without endangering the Protestant Religion, and Civil Administration, according to the Laws of this Kingdom.* The Substance whereof was.

First. That it is the Interest of France, rather to endeavour to Oblige, than Conquer us.

Secondly. That France must take off the frightful Character we have of him, and shew he has no Design of returning our offend King a Conqueror upon us; upon which, he will find many Lords and Gentlemen in his Interest.

Thirdly. That he must over-rule the Bigottry of St. *Germain's*, where one silly Thing or other was done

Page 886.
The Paper,
entitled *The*
Result of a
Conference,
read.

done every Day, which obstructed their Return; and particularly, that none should be permitted to send Letters from thence, but King *James*; for they were generally filled with Arguments against a Restoration. That King *James* must think of nothing short of a Protestant Administration; and must give us a Model of this by preferring Protestants at *St. Germain's*.

Fourthly. That he should encourage Lords and Gentlemen to come to him, of whom he might frame a Council; which would facilitate his Return, and give Satisfaction here.

Fifthly. That the *French* King should grant Liberty of Conscience to the Hugonots, that we might believe his Conduct towards them flow'd from the Hazard he thought himself in from their Rebellious Principles, rather than an Inclination to Persecution.

Lastly. All other Measures depended on the Acceptance this found; and an Answer was impatiently expected: So ended with an unanimous Consent of *Tories* and *Whigs*, who are in a way of closing in His Majesty's Interest.

Lord *Preston*. I can safely swear, I never saw this Paper.

Then another Paper was read, where some Words were written at length, which are written short in this, but no other material Difference.

Then another Paper was shewn to my Lord *Sidney* and my Lord President, containing Heads of a Declaration, which they depos'd were in the Packet. The Substance whereof was; That the King should declare, that the Law should be the Rule of his Actions, and he would endeavour to settle Liberty of Conscience by Law. And that whatever had formerly occasion'd Jealousies, particularly his claiming the Dispensing Power, should be determin'd by Parliament, to be speedily call'd.

That he had shewn his Averseness to an Army of Strangers, by refusing Aid from *France*, on the Prince of *Orange's* Invasion; and should bring no more with him, than for the Defence of himself and his Loyal Subjects: And that even they should be dismiss'd, when the Nation was rid of those

A Paper read, containing the Heads of a Declaration, to be dispers'd on the Landing of King *James*.
Page 887.

those Foreigners who had invaded it, and trampled on the Laws and Liberties of the People.

Juryman, My Lord, We take it, this Paper was deliver'd in the Bundle taken from Mr. *Ashton*, to my Lord *Nottingham*, but not sign'd by Captain *Billop*.

L. C. J. Pollexfen. Then you take it right.

A List of the
English Fleet
produc'd.

The next Paper produc'd, was a List of the *English* Fleet, which Captain *Billop* depos'd, was one of those taken in the Packet, he having mark'd it.

Several Letters read in
Canting
Terms.

Then was read a Letter, dated New-Years-Eve, and directed to Mr. *Redding*, which Captain *Billop* depos'd was one of the Letters taken in the Packet.

Page 888.
Subscrib'd by
no body.

It contain'd only some good Wishes, and gave an Account how their Interest increas'd.

It was not subscrib'd by any body.

Another Letter of the same Date was read, directed to Mrs. *Redding*; and prov'd also to be taken in the Packet, by Capt. *Billop*.

It contain'd an Acknowledgment of some Favours receiv'd; gave an Account of the steady Adherence of himself, his eldest Brother, and the rest of his Family to her Interest; and says, his young Master had all their best Wishes, and daily got more Friends. [*This was not subscrib'd by any body.*]

Another Letter dated the 31st of *December* 1690, and directed to Mrs. *Charlton*, was read.

It says, no Endeavours had been wanting to perfect the Settlement: That he had hopes of seeing him before *Christmas*, and desires he would lose no more Time, for Things might now easily be settled; that his young Daughter would find many Friends, and he hop'd her Portion would be well secur'd.

Another Letter of the 31 *Dec.* 1690, was read, directed to Mr. *Jackson*, and prov'd to be in the Packet, by my Lord *Sidney* and the Lord President. Captain *Billop* having mark'd only the Cover, and therefore could not swear to it.

He tells Mr. *Jackson* he will never quit his Interest, whatever the rest of the Freeholders do. That his Adversary had disoblig'd all his old Tenants

nants, and a little Matter would redeem the Estate, if he would appear in *Westminster-Hall* himself; and begs he would hasten to them, for that the Cause might be brought to a final Hearing before *Easter*, if it were well solicited.

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Another Letter dated the 31st of *December*, but directed to no body, was prov'd by my Lord *Sidney* and Lord President, to be in the Packet.

The Writer observes, That in Trade, as well as Government, Schemes must be laid; and advises his Correspondent to lay his Designs probably, and pursue them diligently, and with Vigour; and though the Times were hazardous, yet by venturing boldly, where venturing was adviseable, it often return'd great Profit. He hopes the Accounts the Bearer would give, would incourage their Trade, and excite the utmost Diligence; and desires his Correspondent not to let the Season spend unprofitably, for that a more likely one could not present itself, than between that Time and the 1st of *March*.

Another Letter proved to be in the Packet by my Lord *Sidney* and my Lord President, dated the 31st of *December*, and directed to no body, was read.

The Writer informs his Correspondent, that this is the Time to make large Advantages by Trading, the Sea being freer than for two Months past; or than they could hope it would be two Months hence. That the Bearer was well instructed in the Markets, and what Goods they wanted; and when, and where, they should be sent. That they earnestly desir'd this happy Opportunity might not be lost, especially the late Undertakers. That these were a little positive in their Terms, but would be good Customers; and he had more than once, seen the Mischief of Over-rating and over-staying the Market. That Opportunities were to be used, they could not be given by Men. That if the several Parcels promis'd, did not arrive before the 10th of *March*, (especially the Copper and the Linnen, of which the Bearer would be more particular) he was satisfied the Summers Profit would be lost. He gives a
great

great Character of the Bearer, and another Gentleman, who took this Opportunity to see those Parts; and concludes with Protestations of his Affections and Readiness to serve the Company.

Page 890.

Another Paper dated the 29th of *December*, prov'd by my Lord *Sidney*, and the Lord President, was read. It was not Directed to, or Subscrib'd by any body.

The Writer tells his Correspondent, His Daughter and he must starve, if the Government can make them: That he had told my Lord his Condition, who thought his Demands very moderate, as he hop'd he would. He desires him to send a Messenger on purpose, to let him know what he would do, and what he would have him do.

Another Paper Undirected, and Unsubscrib'd, was read; Dated 31 *Dec.* 90. This was prov'd to be in the Packet, by my Lord *Sidney* and Lord President.

In this, he desires his Correspondent to consider, what usage they have met with from some that are employed in his Affairs; tells him, he'll not enlarge upon them, since all their Grievances were known to the Bearer. That for his own part, he would stay so long as he could be safe, though with never so much trouble; but it would be a Comfort to know, when they were driven from hence, where they might be safe. That the Reports of Peoples usage, was terrible, and that they suffer'd by the Indiscretions of the Family at *St. Germans*, and the ridiculous Letters from thence, which daily fell into the Hands of the Government; and that their Master and Mistress were as little oblig'd to them, as they. And, he says, the Bearer had furnish'd, for his use, 200 *l.* which he desir'd might be repaid.

Then a Paper, inclosed in the last Letter, was read; Wherein the Writer begs he may not be prejudic'd by any malicious Report; and says, he shall endeavour to deserve the good Opinion of the Lady he writes to. That he knew no Interest, but his Masters and hers, and did not think that they should be made two. That she might depend on the Bearer's Account of them, and their Condition;

dition; his Faith and Courage having been sufficiently experienc'd.

Then a Cypher, or Alphabet of Names, that was sworn by *Billop* to be found in the Packet, was read. *A*, stood for the King; *B*, the Queen; *C*, the Prince of *Wales*; *D*, the Prince of *Orange*, &c.

Afterwards a Letter, and two Bills of Exchange, in *French*, amounting to 500 *l.* and directed to two Bankers in *Paris*, were read. These *Billop* depos'd were in the Packet, and one was sworn to interpret them.

Three other Papers were produc'd, and prov'd by *Billop* to be found in the Packet.

Clerk Reads. Lady *D.* 2000 *l.* and 200 *l.* for Shop Debts, &c.

These Papers seem'd to be *Memorandums* of the Condition the Fleet was in, when the *Dutch* were likely to join them; and how the *French* might Fight the *English* Fleet, before they were join'd. In them, also, Notice is taken, of the Strength of *Portsmouth*, and that it was Garrison'd by Five Hundred Men, who were commanded by *Gibson*, a *Scotch* Pedlar. There was also a List of the Admirals, who commanded the respective Squadrons; and some Heads for a Declaration on the King's Landing. That he should land in *Scotland*, in *February*, and endeavour to unite the Episcopal and Presbyterian Parties. That he should have an Army of *Scotch*, not *French*, and procure Five Thousand *Sweedish* Foot; and hints at the Reputation a Protestant Ally might give him. In them, Notice is taken, that *Ormond* and *Brandon* were disoblig'd about the Guards; how to procure Seamen, and to block up *New-Castle* with *Scotch* Ships, in order to plague *London*. Mentions protesting Lords against the Usurper, and says, three in five, were against the Vacancy of the Throne. Says, *London* Clergy the worst, for we have their Wishes, and they their Oaths.

Some *Memorandums* of my Lord *Preston's* produc'd; that were sworn to be found in the Packet.

Mr. *Townsend* was call'd to prove these Papers were my Lord *Preston's* Hand.

Serj. *Thomson*. Pray, Sir, Whose Hand-Writing is that? Were you Clerk in any Office?

Mr. *Townsend* deposes that he believes these *Memo-randums* to be my Lord *Preston's* Hand.

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Mr. *Bland* deposes the same.

Mr. *Townsend*. I am in the Office of the Great Wardrobe, where I have had occasion to see his Lordship's Hand sometimes; and I believe these three Papers to be his Hand.

Mr. *Bland* was Sworn.

Serj. *Thomson*. Pray, Whose Hand are these Papers?

Mr. *Bland*. I have seen my Lord's Hand sometimes, and believe these three Papers are my Lord *Preston's* Hand-Writing.

Mr. *Warr* was Sworn.

Serj. *Thomson*. Pray, Whose Hand are these Papers?

Mr. *Warr*. I have seen my Lord write, but not very often. This Paper seems to be like my Lord *Preston's* Hand; the other I can't say much of, because that I commonly saw him write, was a large fair Hand, and this is a little Hand.

Serj. *Tremain*. Look upon these Seals: Whose Seals were they?

Mr. *Warr*. I believe the Seals to be my Lord *Preston's*: One of them was his Seal when Secretary of State, I was under him in that Office.

Sol. Gen. My Lord, We have done for the present.

L. C. J. Then, If your Lordship please, you may make your Defence.

Lord *Preston*. My Lord, The Treasons of which I am accus'd, were none of them done in the County of *Middlesex*, and they are laid to be done within this County, in the Indictment.

In the next Place, I desire to know, Whether these *Memorandums* are sufficiently prov'd to be mine? That is, Whether similitude of Hands is Proof, or not, against me in such a Case?

L. C. J. Would your Lordship disprove any Thing of the Matter that has been prov'd against you?

Lord *Preston*, I must deny the whole Fact; but I have no Witneses or Evidence to offer you.

Sol. Gen. We shall offer nothing further, but leave it wholly to your Lordship.

Lord

Lord *Preston*. Your Lordship observes, none of the Witnesses declare I knew any Thing of going into *France*, or had any Concern in hiring the Ship; though, I suppose if they had, it is not Treason. Nor do they say these Papers were found upon me.

L. C. J. If it be prov'd your Lordship had an Intention to carry these Papers into *France*, and took Boat with them in the County of *Middlesex*, and went on Ship-board in order to it: The taking Boat at *Surrey Stairs*, in *Middlesex*, in prosecution of that Intention, is an Over-Act in this County of *Middlesex*.

Lord *Preston*. They have not prov'd that Design.

L. C. J. I am of Opinion, If your Lordship had such a Design to go with these Papers into *France*, and these Papers were framed by you, or you were privy to the Contents of them. Then it is plainly prov'd, that you went into a Boat in the County of *Middlesex*, in order to carry on this Design, and that will make the Indictment good. Whether you did take Water, with an Intention to carry these Papers into *France*? That the Jury are to judge of.

Lord *Preston*. There ought to be two Credible Witnesses to prove every Fact; and, I hope, the Gentlemen of the Jury will consider, there is nothing but Supposition as to me: And, I hope, I and my Family, shall not be ruin'd upon a Supposition.

The rest of the Judges upon the Bench, declar'd there Opinions, That if the Jury believ'd my Lord *Preston* took Boat, with an intention to carry these Papers (which were Treasonable) into *France*, then there was sufficient Evidence of an Overt-Act in the County of *Middlesex*.

But my Lord *Preston* still insisted upon it, That it was not prov'd these Papers were taken upon him; or that he did take Water at *Surrey Stairs*, with an intent to go into *France*.

Then my Lord Chief Justice proceeded to sum up the Evidence, and direct the Jury.

He observ'd, " That although some of the Papers seem'd Mysterious and Canting, yet they were not so obscure, but if well consider'd, the

That it is not prov'd he knew of hiring the Vessel, or the Design of going to *France*; and that the Papers were not found upon him.

My Lord *Preston's* Objections answer'd by the Lord Chief Justice.

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The Chief Justice directs the Jury.

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“ Meaning of them would appear. That others
 “ of them were more Express, and did plainly de-
 “ monstrate a Design to depose the King and
 “ Queen, and to restore the late King; and in Or-
 “ der to it, that the Nation should be invaded by
 “ a Foreign Force. And, that if any Persons had
 “ such Papers in their possession, and were going
 “ to *France* to make use of them, that was Trea-
 “ son, though couch'd under the specious Preten-
 “ ces of restoring the People to their Liberty. That

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“ in one of the Letters, the Writer says, he has
 “ acquainted my Lord with his Condition, and
 “ my Lord will tell you all my Condition: And
 “ there being no other Lord in the Company, my
 “ Lord *Preston* must be intended. That though it

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“ was not prov'd, my Lord *Preston* was at the hi-
 “ ring of the Vessel, yet his being ready to take
 “ Water with them at *Surrey Stairs*, shew'd that
 “ he was privy to it. And that my Lords hiding
 “ himself under the Hatches, in such a manner,
 “ sufficiently discover'd his apprehensions of Dan-
 “ ger. That the Packet being found in the Place
 “ where my Lord was, and his Seals lying by it,
 “ and his desiring Capt. *Billop* to dispose of it,
 “ left no room to doubt whether he was in the
 “ same Design with his Company.

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“ That as to my Lords Objection, That there
 “ was no Proof of Treason in the County of *Mid-*
 “ *dlesex*, He directed the Jury, That if they were
 “ satisfied my Lord was privy to the Design con-
 “ tain'd in those Papers, and was going with them
 “ into *France*, to excite an Invasion, to depose
 “ the King and Queen, and to make use of these
 “ Papers to that end; then every step he took in
 “ order to it, was High Treason. And this tak-
 “ ing Water at *Surrey Stairs*, in the County of
 “ *Middlesex*, was as much High Treason, as the
 “ going a Ship-board in *Surrey*, or being found on
 “ Ship-board in *Kent*, where the Papers were
 “ taken.

My Lord Chief Justice *Pollexfen*, also, desir'd
 he might remind the Jury of some Things that
 had been given in Evidence. And observ'd, That
 my Lord *Preston* had produc'd no Evidence of his
 Affection

Affection to the present Government, which would have been of some Weight in this Case: And told the Jury, If they suffer'd those who were conspiring against the Government, to do it with Impunity, they would do well to consider what the Consequences might be.

Whereupon, my Lord *Preston* desir'd he might have the Liberty of speaking again, before the Jury went out.

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L. C. J. It is contrary to the Course of all Proceedings in such Cases, to have any thing said to the Jury, after the Court has summ'd up the Evidence; but for this once, we permit it.

Lord *Preston*. My Lord, I desire the Jury may be inform'd I am a Protestant, baptiz'd in the Religion of the Church of *England*, in which I have always liv'd, and hope to die in it. Things have been urg'd against me with Severity: They make that a Proof, which amounts but to a Presumption. As in the Case of the Letters that are written in a Cant, and my intention to go to *France*, and those Words in the Letter, where *my Lord the Bearer* is named; but that Letter is not directed to any body, and is as full of Cant as any of the rest. Why should I be suppos'd the Bearer, more than either of the others, when they were found about one of them? And the Reason of my going beyond Sea, is not to be wonder'd at: For I, who had liv'd quietly, after the loss of my Places upon this Revolution, and suffer'd great Inconveniencies in my Estate, and was retir'd to my own House, was imprison'd twice in the *Tower*, and proclaim'd a Traytor in every Market Town, without any Indictment. This made me uneasy here; and, my Lord, I went under a fix'd resolution to go to *Flanders*, or any Place where I could be quiet.

Lord *Preston* admitted to speak in his Defence again, after the Evidence summ'd up by my Lord Chief Justice,

L. C. J. You should have said this before, for it is not the Course to reply upon the Court; and, you know, I let you interrupt me as often as you saw fit, when I was directing the Jury; which has not been allow'd at any Time before. But, my Lord, if you did think you were hardly us'd, yet you must remember it was in a Time of Danger that your Lordship was taken up before; and

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you had shew'd your Disaffection to the present Government, and they were not to be blam'd if they secur'd themselves against you. And if you had a Mind to go abroad, Was *France* the only Country you could choose? A Country at open War with the Government!

Lord *Preston*. I hope the Gentlemen of the Jury will consider all that is alledg'd against me, is but Presumption.

L. C. J. If you reflect on the Court, the Court will reflect upon you; I think the Evidence has been stated very impartially. The Evidence that is given, must have its due Weight and Consideration. If any one can design Innocently to go into *France*, at this Time of Day, with such Papers, and in such a Manner, that I shall leave to the Juries Consideration.

My Lord Pre-
sident.

Then the Jury withdrew, and within half an Hour brought the Prisoner in *Guilty*.

The Tryal of JOHN ASHTON, Gent. at the Sessions-House in the Old-Baily London, on Monday the 19th of January, 2 W. and M. 1690, upon an Indictment of High-Treason, found by the Grand Jury of the County of Middlesex.

The Indict-
ment for con-
spiring the
Death of the
King and
Queen, and
adhering to
the Enemies.

HE was indicted, together with Sir *Richard Grahme*, Bart. Viscount *Preston*, *Edmond Elliot*, Gent. for conspiring the Death of the King and Queen, and adhering to their Enemies. See the Indictment and Arraignment in the Tryal of my Lord *Preston* immediately preceeding, N^o. 856.

Mr. *Ashton*. I desire your Lordship will allow me Pen, Ink, and Paper; and that my Solicitor may stand by me, to refresh my Memory, if I should forget any thing.

The Prisoner
deny'd a Soli-
citor to assist
him at his
Tryal.

L. C. J. Let him have Pen, Ink, and Paper, but the other is an Innovation; the Court cannot allow it.

Then

Then the Jury were call'd, and first Sir *William Hedges*, Knt. (*who appear'd.*)

Mr. *Ashton*. I shall not trouble your Lordship or my self with unnecessary Challenges, but intend to put my self, with an entire Dependance, upon the first Twelve Men that appear.

He makes ~~in~~
Challenges.
Page 902.

The Jury being Sworn, and Proclamation made for Evidence as usual, and the Jury Charg'd with the Prisoner, Mr. *Knapp* opened the Indictment; and Mr. Serj. *Thomson* shew'd the Course of the Evidence.

Then Mrs. *Pratt* was call'd to give Evidence.

Sir. *W. Williams*. Pray give the Court an Account what Treaty you have had with the Prisoner, about a Vessel to go to *France*.

Page 904.

Mrs. *Pratt*. I was sent for to Mr. *Burdett's* House in *Queen street* by *Cheapside*: Mr. *Burdett* ask'd me, if I could help him to a Smack to go for *France*, and said there were Two or Three Gentlemen bound thither as Merchants, to fetch Silk. I was at Mr. *Burdett's* Two or Three Times, and at last Mr. *Ashton* met me there, and gave me a Note to meet him at the *Dog Tavern* at *Ludgate-hill*; and I met him there on the *Monday* Night before *New-Years-Day*, and staid with him an Hour and Half, but Mr. *Burdett* not being there we did nothing. The next Morning we met at Mr. *Burdett's* again, and there we made a Bargain for 100*l.* and this Gentleman, Mr. *Ashton*, told out the Money; there was Ninety-Three Guineas and a Six-pence; and Mr. *Ashton* broke the Six-pence in Two Pieces, and gave one Half of the Six-pence with the Ninety Three Guineas to Mr. *Burdett*; and when the Master of the Vessel should bring the other Half of the Six-pence to Mrs. *Burdett's* (either He or I) we were to receive the 100*l.* The Money was paid on *Tuesday* Night in Mrs. *Burdett's* Bed-Chamber: Mr. *Elliot*, the Master of the Smack, and Mrs. *Burdett* were there.

Evidence of
the Prisoner's
having a Vessel
to go to
to *France*.

Serj. *Tremain*. After the Money was paid, What did you do the next Day?

Mrs. *Pratt*. Mr. *Ashton* order'd a Note to be written (I think Mr. *Elliot* wrote it) to meet at

Mr. Rigby's, at the *Seven-Stars* in *Common-Garden*, the next Night; and I had Orders to send for a Trunk and a Hamper to Mr. *Burdett's*. On *Wednesday* Night we met according to Appointment, about Ten a Clock at Mr. *Rigby's*: There were the Master of the Vessel, Mr. *Ashton*, and Mr. *Elliot*; and Two Gentlemen more whom I never saw before or since.

Sir *W. Williams*. Who made the Bargain with you about hiring the Vessel?

Mrs. *Pratt*. Mr. *Burdett* first treated with me about it, and Mr. *Ashton* agreed with me.

Serj. *Tremain*. When you were at Mr. *Rigby's*, in what manner did they go away from his House?

Mrs. *Pratt*. Mr. *Ashton* was not there at first, but he and Mr. *Elliot*, and two other Gentlemen, came in afterwards, and Mr. *Ashton's* Wife said something about Papers hove in a Hat at Court, and about somebodys being chosen, and one of the Gentlemen said there is nothing in that; I was chose my self last Year, I did not see them go away, but after they were gone, Mr. *Ashton's* Wife gave me some Victuals and Drink, and said she hop'd I would not tell of her Husband; and she hop'd God would deliver her out of the *Lyon's* Mouth: But she said, she doubted they should have no good Luck, for the Cock crow'd.

Mr. *Ashton*. You say Mr. *Elliot* wrote one of the Notes.

Mrs. *Pratt*. Yes, as I remember, it was that to meet at Mr. *Rigby's*.

Mr. *Ashton*. I ask this, that I may justify Mr. *Elliot*; I must take that Note upon my self: And you say I hir'd the Ship, and Mr. *Elliot* was by.

L. C. J. Sir, you are only to ask such Questions as relate to your self: What is said now concerning *Elliot*, goes for nothing against him.

Mr. *Ashton*. Did I ever speak to you about going to *France*?

Mrs. *Pratt*. Yes, you did, and said if I help'd you well away, you would help me to the earning of 1000*l.* before *Lady-Day*: And you ask'd for a Hole to hide what you might have Occasion to keep secret.

Mr.

Mr. *Ashton*. As I hope for Salvation, I never mention'd going to *France* to you. I took it for granted, you knew before I met you that we were to go to *France*. As to the helping her to 1000*l*. there is no great matter in that, when I was to leave the Kingdom, it was necessary for me to use all Arguments to perswade her to help me away; I mention this, only to show the Woman has forgot herself.

L. C. J. Make your Observations on the Evidence to your self; you must stay your Time before you speak to the Jury.

William Pasely was Sworn.

Sir *W. Williams*. What can you say concerning the hiring a Vessel?

Pasely. Mrs. *Pratt* met me at *Billingsgate*, and took me with her to Mr. *Burdett's* House in *Queen-street*; and soon after we came there, Mr. *Ashton* and Mr. *Elliot* came in, and we went up Stairs into the Bed-Chamber, and Mr. *Ashton* brought the Money roll'd up in a Sheet of Paper and told it out; and he took a Six pence and gave one Half to Mrs. *Burdett*, and bid her pay the Money when the other Half (which he kept himself) should be brought her. After the Money was told, we took a Trunk and a Hamper and carried them on board, and then return'd to Mr. *Burdett's* again; and then they gave us a Note to meet at the *Seven Stars* in the *Little Piazza* in *Covent-Garden*, betwixt Ten and Eleven at Night, whither we went accordingly; and soon after we were there Mr. *Ashton* and *Elliot* came in, and a Gentleman said the Cock crow'd, and they should have no good Luck; and they talk'd about Papers being toss'd in a Hat, and two Gentlemen more came in, and soon after we went away: And after we were come out of the House Mr. *Ashton* left us, and Mr. *Elliot* bid me go along with him, and we came to *Surry Stairs*, and at the Corner on the Left-Hand there was an Ale-house, and Mr. *Elliot* call'd the Water-man out of the Ale-house, and he bid me go before, and I went down; and by that Time I was got into the Stern, down came *Ashton* and *Elliot*, and my Lord and his Man: Then we put off

Page 906.

Evidence of
their going on
board the
Smack, and
sailing as far
as *Gravesend*.

off and went thorough Bridge, and came on board the Vessel, which was riding over against the *Tower*: I bid my Men haul up the Anchor, but there being but little Wind we were forc'd to drop Anchor again a little below the *Half Way Tree*, and stay 'till next Morning; about Nine we weigh'd again and came to *Long-Reach*, where lay the *George* Man of War, and they desir'd to be hid; and they were hid under the Quarter-Hatches: And a little before we came to *Gravesend* they all hid again; and there they remain'd 'till they were taken.

Serj. *Tremain*. What kind of Place were they hid in?

And of their being taken. *Pasely*. It was upon the Ballast, and there was Slit-Deal upon the Ballast: They could not set or stand upright, but lay all along or lean'd upon their Elbows. When Capt. *Billop* came aboard, and I had shewn him my Protection, he said he must search farther; and went to rights to the Place where they lay, and found them lying altogether: After they were come out, Capt. *Billop* commanded them into his Boat with me and my Two Men; and when we came to *White-hall* Bridge, the Gate was not open, and we staid there a little while, and Mr. *Elliot* came to me and gave me half a Crown, and bid me say we were bound for *Flanders*, and not to *France*.

L. C. J. Had any body mentioned going to *France* to you?

Pasely. Yes, They ask'd me whether I could carry them save to *France*: It was Mr. *Elliot* or Mr. *Ashton*; but I think it was *Ashton*.

Page 907. *Jury-man*. What was the Sum that was paid at *Burdett's*?

Pasely. It was Ninety Three Guineas and a Sixpence; Mr. *Ashton* brought it and laid it down in the Window, and he told it out and put it up again, and gave it to Mrs. *Burdett*.

Jury-man. What is the usual Rate? What may a Smack and Three Men deserve for going to *Flanders*?

Mr. *Pratt*. I believe they may go for Twenty or Thirty Pounds.

Jury-

Jury-man. *Pafely* says he gave them Notice the Barge was coming. I would ask him if he knew there was any Design to search him.

Pafely. No, I did not know of it.

Serj. Tremain. Had you any Discourse with them of hiding before they went on board?

Pafely. Yes, *Ashton* and *Elliot* both ask'd, if there were a Place in the Ship to hide in, and I told him there was: And they desir'd that if we saw any Man of War's Boat, we would tell them, that they might be hid.

Serj. Tremain. Was there any Coat left on board you?

Pafely. Yes, there were Two of the Waterman's left on board, and I lock'd them up.

Serj. Tremain. Was that the Man that own'd the Coats? [*showing him Betsworth*].

Pafely. Yes, it is.

Then *Charles Betsworth* was Sworn.

Betsworth. Tell what you know of carrying any Gentleman on board a Smack.

Pafely. I was going home from *Surrey-Stairs* about Seven or Eight a Clock in the Evening, and a Gentleman call'd *Sculler*, and ask'd me to carry him as far as the *Tower*, and I told him 'twould be Ten a-Clock before the Tide would serve; and he agreed to give me Half a Crown to carry him then, and I was to stay for him at the *Swan Ale-house*: So about Eleven a Clock comes a Gentleman down and calls *Charles*, and there was a kind of a Seaman with him, and the Seaman went into the Stern; and there was Three more Gentlemen came down the Stairs into the Boat, and they brought a Leather-Bag that would hold about a Peck: And we put off, and row'd through Bridge, and when we came near *Pickle-herring-stairs*, the Man in the Stern said there lies the Vessel, and it had a long Pendant and a Top-sail loose; and when I had put them on board I rowed away, but when I came to Land I miss'd my Cloaths, and I row'd back again to the Place where the Vessel lay, but they were gone; so I rowed on beyond *Barkin-Shelf*, and there being no Wind I thought they could not be gone beyond me; so I rowed
back

back again to *Greenwich*, but could not meet with the Vessel, and did not hear of my Cloaths 'till last *Fryday* was Seven-night, when they were brought me.

Sir *W. Williams*. Can you say the Prisoner was one of those you carried on board the Smack.

Betsworth. No, I know never a one of them.

Serj. *Tremain*. Did you take in your Pendant, *Pasely*?

Pasely. Yes I did when we weigh'd Anchor, *Elliot* bid me take it in.

Serj. *Tremain*. How many came on board the Smack?

Pasely. Four, My Lord *Preston*, Mr. *Ashton*, Mr. *Elliot*, and my Lord's Man.

Fisher was Sworn.

Sir *W. Williams*. Pray acquaint the Court what you carried on board the Smack.

Fisher. About Six Hours before they came on board, my Master brought me to Mr. *Burdett's* House, and gave me a Trunk, and another Man a Hamper, and we carried them on board; and about Eleven a-Clock my Master brought Mr. *Ashton* and the others aboard, and we heav'd Anchor and went down the River, but there being little Wind were forc'd to come to an Anchor again about the *Half-way-Tree*: In the Morning we weigh'd, and about Nine a-Clock came into *Long-Reach*, where lay the *George* Man of War, and then Mr. *Ashton* and the rest hid, and at *Gravesend* Block-House they hid again; and when we were past it, one of them bid me go down to the Hamper and fetch up some Victuals, but before I had fetch'd it all up we spy'd the Barge coming to us, and they hid again; and the piece of Beef was set a top of them: When Capt. *Billop* came on board, and had read our Master's Protection; he said he must look further, and went down to the Quarter-Hatches and took them out; and after he had secur'd them, and got all the Papers and Writings, he commanded us all into his Barge, and carried us on board the *George* Frigate in *Long-Reach*; and there Mr. *Elliot* came to us, and bid us say we were going for *Flanders*;

Flanders; and when we came to *White-hall* Mr. *Ashton* gave me half a Crown, and whispered me and bid me say, we were bound for *Flanders* and not to *France*.

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Mr. *Ashton*. I told you, you were Prisoners now, and I gave you that, and would take further Care of you.

Fisher. You did not say, We were Prisoners, but you said, you gave me that to help bear our Charges that Night, and the next Day you would take further Care of us.

Then *James Amonds* was call'd.

He depos'd, That they came on board when he was asleep, and he saw neither Boat nor Waterman; but that they set Sail and came to an Anchor at *Half-way-Tree*, as the last Witness had depos'd; and that as the Deponent was steering at the Helm a Water-man call'd to them, and enquired if the Gentlemen he brought on board, had not carried his Cloaths aboard with them; to which the Deponent answer'd, he knew nothing of it, as indeed he did not. That Mr. *Ashton* said to the Deponent take Care of us now, and we will take Care of you hereafter: And said they would help us to many a Freight and many a Pound. That after they were past *Gravesend*, *Fisher* was sent down for the Victuals, and brought up some Roast Beef and other Things; and just as the Beef was going into the Cabbin, the Deponent gave them Notice a Barge was coming to press; and then they took the Victuals down into the Quarter, and there they lay, and the Victuals a top of them; as the last Witness had depos'd; and added, That when Capt. *Billop* came on board and *Ashton* came up, one of the Captain's Watermen said that Gentleman had put something in his Bosom; and the Captain turn'd Mr. *Ashton* about and said, What did you put in your Bosom? and he answer'd, only his Handkerchief, and pull'd out his Handkerchief and shew'd him; but the Captain put his Hand in and pull'd out Papers with a piece of Lead tied to them: That they were all commanded into the Barge and carried to *White-hall*, when my Lord *Preston's* Man came to the Depo-

Page 910.

A Packet of Letters taken upon *Ashton*, with a Lead fix'd to it.

Deponent, and call'd him aside, and said, Here's half a Crown will serve you to Night; and be sure you say, you were bound to *Flanders*, and not to *France*; and you will be taken further Care of to Morrow.

Serj. *Tremain*. What did they lie upon in the Quarter Hatches?

Amonds. There were three or four flit Deals laid over the Ballast; but it seems they had shuffled them aside when they were taken, for the Ballast lay open.

Mr. *Ashton*. I desire the Witnesses may all stay in Court.

L. C. J. Let them all stay.

Then Captain *Billop* was call'd.

Sir *W. Williams*. Pray give an Account, where you took these Persons?

Capt. *Billop*'s
Evidence of
his taking
them, and
seizing the Pa-
pers.

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Capt. *Billop*. The last of *December*, my Lord *Danby* came to me at one of the Doors of the House of Lords, and carried me to the Lord *Lindsey*'s Chamber; whither, in a little Time, my Lord President, his Father came: And told me there were several Persons going to *France* with Papers of dangerous Consequence; and desir'd I would use my Endeavour for the seizing and securing those Papers. And my Lord *Danby* said, he would provide me a Boat, which he had borrow'd of the Dutchess of *Grafton*. And my Lord came to *Tower-Wharf* himself with the Boat, and some Arms; and I borrow'd more Arms at the *Tower*. And about Eleven a Clock we put off, and row'd down to *Gravesend*, where I refresh'd my Men, and afterwards went down into the *Hope*; and judging that no Vessel that came from *London* that Tide could be a Head of me, I return'd, and went a Board several Vessels, and press'd some Men, and among the rest, some *Barking* Men, who knew all the Vessels in the River; and before we came to the *Ness Point*, by *Tilbury-Fort*, we saw several Smacks coming down the River, and a *Barkin* Man look'd out, and told me the Headmost was the *Thomas* and *Elizabeth*: Whereupon I went on board, under pretence of pressing the Men, but the Master shewing me his Protection, I told him I must

I must search further; and I went into the Quarters, and took up the Scuttle, and saw some Gentlemen lying there, and bid them turn out. The first that came to Hand, was my Lord *Preston*; I found some Papers about him, and put them into my own Pocket. Then I search'd Mr. *Elliot*, and afterwards Mr. *Ashton*. And Mr. *Ashton* went down again, and when he came up, one of my Seamen told me he saw him put something into his Bosom; so I turn'd him round, and thrust my Hand into his Bosom, and there I met with the Packet that had the Lead affix'd to it; so I order'd them all into the Boat, and left two of my Men with the Smack, with Orders to search her. Then I rowed up against Tide, and Mr. *Elliot* calling one of the Gentlemen my Lord, so soon as I understood my Lord *Preston* was among them, I saluted him, and his Lordship desired to go ashoar at *Gravesend*; but I excus'd my self, and carried them aboard the *George* Frigate. But before we came there, as we were drinking a Glass of Wine, my Lord *Preston* told me, he would be sure to acknowledge the Civility I had shewn him; and he had this Expression, *If there ever was any thing he could serve me in, he would do it with all his Heart, if I would dispose of the Packet.* And Mr. *Ashton* said, What Good would it do me to injure so many Gentlemen? And desir'd I would throw the Packet over-board: And after this, with a great deal of Insinuation, Mr. *Ashton* said, What if you should turn about, and go along with us? And Mr. *Elliot* said, Prithee throw the Packet over-board. And while I was in the *George* Frigate, my Lord, Mr. *Ashton*, and Mr. *Elliot*, were with me in the Steerage, and *Elliot* desired I would dispose of the Packet, and I might make my self as Rich and as Great as I pleased; said I, I shall be taken Notice of to be whispering with you, pray forbear; but Mr. *Ashton* entreated me again to throw the Packet Over-board; and when we came into the Boat again, and were rowing up to *London*, they used the same Arguments, and told me I might take the Letters that were found in my Lord *Preston's* Pocket, and tye the Lead to them, and throw the

Page 912.

The Prisoners
persuade Bil-
lop to dispose
of the Packet.

Billop carries them with the Papers to my Lord Nottingham's Office.

Page 913.

the Packet Over-board; and when they were very importunate, I said, If I should be such a Villain would you trust me again, if ever it should be your Day? But said I, I will never put it in your Power. Then Mr. *Elliot* seemed angry, and said, Every Dog had his Day: And I brought them and the Packet to my Lord *Nottingham's* Office, and I withdrew when my Lord *Preston* was call'd in, and left the Packet upon the Table unopened; and when my Lord *Preston* came out, I went in again, and the Packet lay in the same Place and Posture unopened: And my Lord *Nottingham* ask'd who I took the Packet from; and Mr. *Ashton* own'd I took it from him.

Mr. *Ashton*. Was it not after I went down into the Hole for my Hat, that you took the Papers out of my Breast?

Capt. *Billop*. Yes, I believe it was.

Mr. *Ashton*. Did I speak to you about disposing of the Papers, before we came aboard the *George* Man of War!

Capt. *Billop*. Yes, you did; and you said, I know Capt. *Billop*, if he serve us, he will do it generously, and like a Gentleman.

Serj. *Tremain*. Did Mr. *Ashton* say any thing about going along with them?

Capt. *Billop*. Yes, he said, Come go along with us, you may do as well there, or better, than you do here.

Mr. *Ashton*. Was not the bundle of Papers out of your sight, during the Time my Lord *Preston* was examining by my Lord *Nottingham*?

Page 914.

Capt. *Billop*. Yes, it was; but it was unopen'd, except that my Lord had taken off the Lead; and there was a little Paper, or two, fell loose from the rest, but not opened.

Mr. *Ashton*. Was the Packet Sealed, when you took it?

Capt. *Billop*. No, It was tied very hard, and there were several sealed Letters in it.

L. C. J. Them two Papers you speak of, Were they sever'd from the Packet in your presence?

Capt. *Billop*. I cannot say I did see them cut.

Furyman.

Juryman. Who was with my Lord *Nottingham*, when my Lord *Preston* was there?

Capt. Billop. There was no body else then.

Juryman. Then 'tis not probable the Papers were altered before Captain *Billop* came in.

Mr. Ashton. But I hope a Man shall not be Condemned upon Probabilities.

Johnson was Sworn.

He depos'd, That he went Through-Bridge in a Pleasure-Boat, with my Lord *Darby*, against Tide; and that they came to the *Tower*, and furnished themselves with Arms, and then he went down with *Capt. Billop* to *Gravesend*; and they took the Prisoner, and the rest of them, aboard the Smack, as is above related by *Capt. Billop*. And the Deponent said, he was the Person that saw *Mr. Ashton* take up something and put into his Bosom, and told *Capt. Billop* of it. And that when the Captain ask'd *Mr. Ashton* what it was, he answer'd, Nothing but his Handkerchief, and plucked out his Handkerchief: But the Captain put his Hand into *Ashton's* Bosom, and pulled out a parcel of Papers with a piece of Lead tied to it. And I went down again, and found there two Seals, and took them up. That as they were rowing up the River, *Mr. Elliot* wish'd a Thunderbolt might drop into the Boat; and as they went under *London-Bridge*, he wished it might drop down upon his Head.

Mr. Ashton. Had not I been up, and search'd, before the bundle of Papers was found upon me?

Johnson. Yes, I think you had been up before.

Mr. Ashton. And then you saw me take the Packet off the Ballast?

Johnson. Yes, I saw you take it out of the Ballast, and put it into your Bosom.

Mr. Ashton. Did not that Bundle of Papers lie near the Place where the Seals lay?

Johnson. Yes, it lay just by them.

Then *Capt. Billop* was call'd again.

Serj. Thomson. When you had delivered these Papers to my Lord *Nottingham*, what did he do with them?

Capt. Billop. After he had examined these Gentlemen, he opened them before me; and looking

on some of the Papers, he said, If this Packet had gone, we had been quickly visited by the *French*: And my Lord said I might look upon them, and several of them I did look into, and put my Mark upon them, After my Lord *Nottingham* had perused them, he tied them up with a piece of Twine, and put his Seal upon them, and gave them me again to carry to my Lord President, which I immediately did.

Earl of *Nottingham* Sworn.

Serj. *Thomson*. My Lord, Please to give the Court an Account, how these Papers came to your Lordship?

Lord *Nottingham*'s Evidence of *Billop*'s bringing the Packet to him.

Lord *Nottingham*. Capt. *Billop* brought me a Packet, tied about with a Packthread, to which there was a piece of a Leaden Pipe fix'd; and in the Packet there was stuck another Paper, and the Packet was laid on the Table while I examin'd my Lord *Preston*; and then I called in Mr. *Ashton* and Capt. *Billop*, and the Packet so tied, I cut open in *Billop*'s presence. And all the same Papers in that Packet, and no other, together with the little Paper that was stuck in, I tied up, and sealed them in a Sheet of Paper, and gave them again to Capt. *Billop*, to carry to my Lord President. For the other Letters, they being from my Lord *Preston*'s Children, and not relating to the Publick, I gave them to him, to give my Lord *Preston* again.

Mr. *Ashton*. Pray, my Lord, acquaint the Court, how long my Lord *Preston* was with you in the Room.

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Earl of *Nottingham*. I believe, less than a Quarter of an Hour; and I don't remember any body else was with me then.

My Lord President was Sworn.

Serj. *Thomson*. Pray, What Papers did Capt. *Billop* bring to your Lordship?

Marquis *Car-marthen*, Lord President, deposes *Billop* brought the Packet to him, from the Lord *Nottingham*.

Lord President. Capt. *Billop* brought me a Packet, tied with Packthread, and sealed with my Lord *Nottingham*'s Seal. I perus'd the Papers, and it being late, locked them up till next Morning, and then carried them to the King; and the King read some of them, in my sight, in his Closet at *Kensington*: I never parted from the King, but was present

present all the while. The King put up all the Papers again, and commanded me to call a Cabinet Council, and deliver them to the Council. Accordingly I delivered them Paper by Paper, and my Lord *Sidney* mark'd them all; and then they were delivered to my Lord *Sidney*.

They are delivered to the Cabinet Council, and mark'd by the Lord *Sidney*.

Mr. *Ashton*. Did any of your Lordships Secretaries, or Family, read these Letters?

Lord *President*. No, I lock'd them up in a strong Box, in my Closet.

My Lord *Sidney* was Sworn.

Sol. *Gen*. Will your Lordship please to declare what Papers you receiv'd from the Lord *President*?

Lord *Sidney's* Evidence how he had kept the Papers.

Lord *Sidney*. My Lord *President* deliver'd a Packet of Papers at the Cabinet Council; I received every one of them, and mark'd them there, and put them in my Pocket; the next Day I gave them to Mr. *Bridgman* to copy out, and he delivered them back to me again.

Sol. *Gen*. Will your Lordship please to look upon those Papers, and see if they be Part of them?

Page 917.

Lord *Sidney*. Yes, they are.

Sol. *Gen*. My Lord *President*, Will you please to look upon them?

Lord *Preston*. These are two of the same Papers which Captain *Billop* brought me.

Mr. *Ashton*. My Lord, I hear them say One of those Papers is a Copy of the other: I desire the Original may be read, and not the Copy.

Serj. *Thomson*. You may look upon them, and tell us which is the Original.

Mr. *Ashton*. That is very well observ'd, Sir, that is throwing Water upon a dead Mouse.

Sol. *Gen*. There may be a particular Reason you would not have the Copy read, lest it should prove your own Hand-Writing.

Clerk Reads.] The Result of a Conference, &c. As in my Lord *Preston's* Tryal.

Then another Paper, being the Heads of a Declaration intended to be published on the Landing of the *French*, was shewn to my Lord *Sidney* and Lord *President*, which they respectively deposed was one of the Papers in the Packet.

The Papers are read as Evidence against the Prisoner, containing Treasonable Matter.

Clerk Reads.] That the King will return, &c. as in my Lord Preston's Tryal.

Page 918.

Another Paper was shewn my Lord *Sidney* and Lord President, giving an Account what Condition the Fleet was in; which they deposed was in the Packet also; and it was read. Then Two Letters giving an Account of the Affairs of *England*, and how their young Master's Interest encreas'd, were likewise shewn to my Lord *Sidney* and Lord President, and read: The one was directed to Mr. *Redding*, and the other to Mrs. *Redding*. See Lord Preston's Tryal, p. 887. Another Letter in Canting Terms, as from a Merchant, was shewn the Two Lords, and read; and another to the same Effect. See Lord Preston's Tryal, p. 889.

A Letter giving an Account of the Writer's Condition, and his Readiness to hazard any thing for the Person he writes to, was prov'd in like manner, and read.

A Paper being a Key to the rest, was prov'd and read as before.

A Letter of Recommendation, in behalf of one Mr. *Orbinet*, was Read, and two Bills of Exchange for 500 l. being prov'd as before. See the Lord Preston's Tryal, p. 891.

Page 919.

Then a Paper of Memorandum's prov'd as before was read; wherein was an Account of the Ships in the Royal Navy, their Number and Force, how the Garrisons here were Mann'd, and how they might be surpriz'd, where the *French* Fleet should fight us, and how they might hinder the *Dutch* from joining us, what Number of Ships at *Newcastle* might plague the City of *London*, &c. And takes Notice of the Clergy of *London* as the worst, and says, they have their Oaths and we their Wishes. See Lord Preston's Tryal, p. 892.

Mr. *Ashton*. My Lord, I am inform'd there were several Letters read at my Lord Preston's Tryal, implying my Lord was the Bearer, which I desire may be read: And Mr. Serj. *Tremain* has observ'd, that Three or Four of these last Papers were the Ground-work of all this Business; these have been prov'd to be my Lord Preston's Hand-Writing; from whence it appears I could know nothing of this Matter. Serj.

Serj. *Thomson*. We do grant that the King's Witnesses did depose at my Lord *Preston's* Tryal, that they believ'd them to be my Lord *Preston's* Hand.

Then the Letters were read wherein my Lord is call'd the Bearer.

Juryman. Pray, my Lord, when that Letter was read on *Saturday*, How did the Court construe it then?

L. C. J. They did take it, that because my Lord was mention'd he might possibly be the Bearer.

Mr. *Ashton*. And I am inform'd, that his Lordship, in summing up the Evidence, gave another Reason that the Packet was my Lord *Preston's*, and not mine or *Elliot's*, viz. Because it was seen lying by the Seals.

L. C. J. Sure, there was no such thing said; for that Evidence that tended to convict my Lord *Preston*, did by no Means tend to acquit you.

Serj. *Tremain*. Before Mr. *Ashton* proceeds in his Defence, I would observe there is this Expression in one of the Papers, viz. *I say nothing of another Gentleman who takes this Opportunity to see those Parts, but he has shewn a Zeal and Sincerity in the Affair, equal to most.* Here is another Person taken Notice of, besides the Bearer.

Mr. *Ashton*. There was another besides me, and so it is not plain who is meant.

L. C. J. Mr. *Ashton* observes right; It does not concern him, for it is uncertain whether of the two it relates to.

Then Mr. *Ashton* proceeded in his Defence. He said he did acknowledge the Design of going to *France*, though he never mentioned it to the Woman who had sworn it against him: That one Reason of his going over was, to settle some Accounts of Lieutenant-General *Worden's*, who was dead, whose Business he had transacted: That he had also a considerable Sum of Money due to him from a Person in *France*, which he could not get in without being on that Side: That he had long had a Design to go over upon these Accounts, and was once apprehended at *Dover* as he was attempting

Mr. *Ashton's* Defence.

He says he was going to *France* upon private Business.

He insists, that carrying Treasonable Papers to the King's Enemies is not Treason, where the Bearer is not privy to the Contents.

it; so that he was not going upon any Design that was just form'd, or indeed about any thing that concern'd the Publick, and he had often endeavour'd to procure a Pass, but could not obtain it; and that was the Reason he took this Method: And own'd, that he did Hire the Boat, and pay the Money, as the Witnesses had testified, which Facts did not amount to High Treason: And that even carrying Papers to the King's Enemies, unless it was proved the Party was privy to the Contents of them, was not Treason if the Lawyers informed him right; and there was not any manner of Proof given by the King's Council, that he was privy to any one of the Papers that had been read: And he believed all that had heard the Evidence must conclude, that he found them in the Place where the Seaman saw him take them up: And he thought no Overt-Act conducing to prove the imagining or compassing the Death of the King or Queen (which was the Treason he was charg'd with,) had been prov'd against him.

L. C. J. Whoever designs to depose the King and Queen, and incite an Invasion, is construed to compass and imagine the King and Queen's Death, if this Design appear by any Overt-Act.

Mr. Ashton said, he believ'd the Law might construe it so, but he had been under such a strict Confinement, that he had not had an Opportunity to advise with Council, or any Friend, till within a Day or Two of his Arraignment: That the Panel was given him so late, that he had not Six Hours Time to enquire into the Morals and Qualifications of his Jury: And, that in Confidence of his Innocence he had wav'd his Challenges, and put himself upon the first Twelve Men that were called: And he said, Because he had been aspers'd and represented as a Papist, he would call Two or Three Witnesses to his Character.

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Calls Witnesses to his Character.

Then *Dr. Fitz Williams* appeared, and testified *Mr. Ashton's* constant Attendance at Divine Service, and his receiving the Sacrament about half a Year before; but being asked whether it was since the Prayers were altered, he could say nothing to that: The Doctor acquainted the Court also with the

the Concern Mr. *Ashton* was in, when he discovered one of his Relations had embraced the Communion of the Church of *Rome*: But the Doctor being asked if he himself had taken the Oaths, he answered, It was his Unhappiness he had not, but he had always behaved himself peaceably under the present Government, and attended Divine Service since the Prayers had been altered.

Dr. *Lake* testified, That Mr. *Ashton* was a Man of exemplary Piety and Devotion, and had shewn an extraordinary Zeal against Popery, for which he had sometimes been a Sufferer, and that he had been acquainted with him these Sixteen Years.

Page 923.

Dr. *Bursh* testified, that he had been long acquainted with the Prisoner, and believed him to be a very good Protestant, but that he had not had much Conversation with him for Two Years past.

Mr. *Tomlinson* said, the Prisoner very devoutly attended at the Prayers for the Sick, when General *Worden* lay ill, about half a Year ago.

L. C. J. But Mr. *Ashton*, I would desire you to answer this one thing. Why did you use such Importunity to have the Papers thrown Over-board?

Mr. *Ashton*. I humbly thank your Lordship for reminding me of this, and whatever my Fate is, I must own I have had a fair Tryal for my Life.

L. C. J. And, Why did you desire Captain *Billop* to go along with you?

Ashton. The Captain has sworn it; but as I hope for Salvation I don't know I spoke to him of any such Thing: But I own I did endeavour to perswade him to throw the Packet Over-board; and I presume there is no Person in Court who had been engaged with one so unfortunate, but would have done the same Thing for a Friend, though he had not known the Contents of those Papers, if they had seen him so uneasy and concern'd to have them look'd into,

Owens he would have perswaded *Billop* to throw the Packet Over-board,

L. C. J. There is another Thing you open'd; You said you were going into *France* about Colonel *Worden's* Affairs, who had a great Account to make up: How do you prove that?

The Queen's
Dowry taken
from her.

Page 924.

Mr. *Ashton*. That there is a great Accompt depending, I may appeal to Mr. *Sollicitor* himself, who knows there is a Petition now depending in the House of Commons from the Queen's Tradesmen, to whom she ow'd 68000 *l*. She assign'd the Arrears of some growing Rents for the Satisfaction of this Debt; but the King and Government have not thought fit to let them be applied to her Use, or the Satisfaction of those Debts; and there happens to be one Man now in Court, that knows I have engag'd for, and actually have paid a great Part of this Debt, believing the Assignment to be good, out of my own Pocket.

Mr. *Spalding* was call'd.

He deposed, That he made the late Queen's Coach-Harness, and there was due to him 470 *l*. of which Mr. *Ashton* had advanced to him near 400 *l*.

L. C. J. *Pollexfen*. Was there no Money return'd over from King *James's* Queen?

Mr. *Ashton*. No, my Lord, directly nor indirectly: I believe they are not in a Condition to return Money.

L. C. J. *Pollexfen*. As to what you have offer'd to prove you a Protestant, no body questions it; and all that are concerned in this Matter are such: For the whole Design shews, they are all so careful of the Protestant Religion, they design to restore and establish it by the *French* King's Power, as we understand by the Papers.

Mr. *Ashton*. I hope no doubtful Insinuations or Sugestions will affect me.

Just. *Eyres*. Pray, If you did not know what was in the Papers, How came you to deny you had them in your Bosom?

Page 925.

Mr. *Ashton*. For the same Reason I would have had them thrown Overboard: Out of Kindness to the Person with whom I happened to be taken.

L. C. J. *Pollexfen*. Consider, Mr. *Ashton*, the Difficulties you have to get over: First, You say you went over upon your own Account; then that you hir'd the Vessel for you and *Elliot*: Why would you have *Elliot* go with you into *France*?

Mr.

Mr. *Ashton*. He desir'd the Favour of going; I did not ask him.

L. C. J. Why would you have my Lord *Preston* go with you?

Ashton. I thought to have gotten my Passage free, with a Person of his Lordship's Quality.

L. C. J. Then you hired the Vessel for my Lord *Preston*!

Ashton. No, my Lord.

L. C. J. Was it my Lord's Money, or your own, that you paid?

Ashton. I paid the Money, but how I should be re-paid I could not tell.

L. C. J. Would you pay 100 *l.* for a Boat to go to *France* for your own Convenience, and yet hope to get your Passage free by taking in my Lord *Preston*?

Ashton. I can't tell how it would have been, but at the worst we could but have paid our Shares.

L. C. J. But you can tell, if you will, how it was agreed amongst you.

Ashton. As I hope to be sav'd I cannot tell.

L. C. J. But, Why did you desire the Seaman to say you were going to *Flanders*, and not to *France*?

Ashton. Your Lordship knows it is a Fault to go to *France*, though it do not amount to High Treason.

L. C. J. Why did you ask the Master of the Vessel for a convenient Place to hide in?

Ashton. Because I knew many had been stopp'd going to *Flanders*, though they had Passes.

Serj. *Thomson* in his Observations on the Evidence was pleased to say, That in Case it appear'd Mr. *Ashton* hired the Ship for himself and the Lord whose Papers these were, and that Mr. *Ashton* took such Notice of the Papers as to take Care of them, to suppress and conceal them; that would be an Evidence of his Knowledge of the Importance of them: And if so, he would be equally guilty of High Treason. *The Truth of which Assertion my Lord Chief Justice said he doubted.*

My Lord Chief Justice, after he had summ'd up the Evidence, in his Observations upon it he says,
“ That

The Chief Justice directs the Jury.

Page 929.

He says, Carrying Papers to *France* containing a Project for an Invasion, was Treason.

Page 930.

And whether from the Circumstances, it did not appear *Ashton* was privy to the Contents of them, he left to the Jury.

It is objected to Mr. *Ashton*, he had made no Proof of any private Business he was going upon.

“ That although Mr. *Ashton* had no Knowledge
 “ upon what Design the rest of the Company were
 “ going to *France*, his going to *France*, at that
 “ Juncture, would have been a Crime; but it
 “ would not have amounted to High Treason:
 “ But to go into *France*, and carry a Treasonable
 “ Scheme and Project for an Invasion, that was
 “ Treason. And the sole Question was, Whether
 “ Mr. *Ashton* went with such a Purpose or not?
 “ That Mr. *Ashton*’s Hiring the Smack; his giving
 “ such an extraordinary Price for it; and such Encouragement to the Owner of it, as that he
 “ would help her to the Earning of 1000*l.* his
 “ Concern to secure these Papers, and his Impor-
 “ tunity afterwards to have them thrown Over-
 “ board; and his giving the Seaman Money to say
 “ they were bound for *Flanders*: Whether these
 “ Circumstances were Evidence of his being ac-
 “ quainted with the Contents of those Papers, and
 “ that he was going to *France* with them with an
 “ Intent to carry on the Design of Deposing the
 “ King and Queen; this he left to the Considera-
 “ tion of the Jury.

My Ld. Ch. Just. *Pollexfen* also made some Observations on the Evidence; and said, “ That at
 “ my Lord *Preston*’s Tryal it was labour’d, that
 “ Mr. *Ashton* was the Bearer, and not my Lord;
 “ and now Mr. *Ashton* insists, that they were my
 “ Lord’s Papers; but if they were all concerned
 “ in the carrying and transporting of them, they
 “ were all alike Guilty of Treason, and they could
 “ not shuffle it from one to the other: And this
 “ he apprehended was their Reason that they
 “ would not be tryed together, that by this means
 “ they might all escape, if this should be suffi-
 “ cient to serve their Turn: For the Question was,
 “ If they were not all equally concerned; and
 “ that it was not Mr. *Ashton*’s bare Affirmation
 “ that he had other Business, would be a sufficient
 “ Excuse for him; for if he had been going to
 “ *France* to settle such an Account of Collonel
 “ *Worden*’s, when he was search’d, some Papers re-
 “ lating to it would probably have been found;
 “ nor was there any Note or Instructions produ-
 “ ced,

“ced, concerning the Money due to him, which
 “he pretended he was going to recover. That
 “the Hearts of Men were to be discovered by
 “their Actions; and if a Man’s Affirmation only
 “were a sufficient Defence, none would ever be
 “Convicted. And observed also, That the Pri-
 “soner, my Lord *Preston*, and *Elliot*, were well
 “known to be Men of the same Principles and
 “Disposition.

Then Mr. *Ashton* begged Leave to speak, though the Evidence were summ’d up, [*which was granted*] and said, He thought there was no Proof that he knew, or was privy to the Contents of any of those Papers.

Page 931.
 The Prisoner permitted to speak after the Evidence summ’d up.

Just. *Eyres*. When you importuned Capt. *Billop* to throw away the Papers, Why then did you use this as an Argument, *It would do him no Good to injure three honest Gentlemen*.

Ashton. I did not say so, though I confess he has sworn it.

L. C. J. From the Facts above recited, which have been well proved, the Jury are to judge whether you were privy to the Design.

Then the Jury withdrew, and the Court adjourn’d for half an Hour, and at their Return the Jury return’d with their Verdict, That the Prisoner was *Guilty*. He is Convicted.

Then the Court Adjourn’d for an Hour; when my Lord Mayor, Mr. Deputy Recorder, and several of the Justices and Aldermen, returned into Court again, and my Lord *Preston* and Mr. *Ashton* were brought in; my Lord *Preston* being set without the Bar, and Mr. *Ashton* within it.

Page 932.

It being demanded of my Lord *Preston*, What he could say why Judgment should not be pronounced against him according to Law.

Lord *Preston* and *Ashton* call’d to hear Judgment.

He said, He must appeal to the Court, (though now he doubted ’twas too late,) Whether the Treason with which he was charged had been sufficiently proved: For in the Case of Collonel *Sidney* it was said, That Comparison of Hands was no Evidence, and that there ought to be one or two Witnesses of the Writing of it: That being in a Crowd and great Disorder, occasioned by the

Lord *Preston* objects, that Similitude of Hands is no Evidence of his Hand-
 Length Writing,

Length of his Tryal, he had not urged this as he ought, but now he knew it was too late, and had nothing more to say, but submitted to the Judgment the Law had assigned.

It being demanded of Mr. *Ashton* What he had to say, &c.

Mr. *Ashton* desires to see his Indictment, which is denied.

Sentence passed on them by Mr. Recorder.

Page 933.

Mr. *Ashton* desired to see the Indictment; but was told, He had heard it read once in *Latin*, and twice in *English*, and could not be permitted to see it. Then he said he was inform'd the Word *Cymba* was Written with an S; but upon Perusal of the Indictment, it appear'd to be with a C throughout; and he having nothing further to offer, Judgment was pronounced against both of them, as Traytors, by Mr. Deputy Recorder: And they were remanded to *Newgate*.

The Tryal of HENRY HARRISON, Gent. at the Old-Bailey, London, for the Murder of Dr. ANDREW CLENCHE, 6 April, 4 W. and M. 1692.

Indictment for Murder.

“ THE Indictment sets forth, That the said
 “ *Henry Harrison*, the 4th of *January*, in the
 “ 3d Year of the said King and Queen, about Ele-
 “ ven at Night, at the Parish of *St. Peters, Corn-*
 “ *hill*, in the Ward of *Lime-street, London*, being
 “ in a Coach with the said *Andrew Clenche*, toge-
 “ ther with another Person, unknown, did then,
 “ and there, feloniously make an Assault on the
 “ said *Andrew Clenche*, and with the Assistance
 “ of the said other Person, unknown, did twist
 “ a Pocket Handkerchief, (with a Coal in it) of
 “ the Value of Two-pence, about the Neck of the
 “ said *A. Clenche*, and therewith did feloniously,
 “ and of Malice aforethought, Choak and Stran-
 “ gle the said *A. Clenche*, of which he instantly
 “ died. And so the said *Henry Harrison*, with
 “ the Assistance of the said other Person, unknown,
 “ did at the Time and Place aforesaid, feloniously,
 “ and of his Malice aforethought, Kill and Mur-
 “ der

“ der the said *Andrew Clenche*, against the Peace
 “ of the said King and Queen, &c.

To which Indictment he pleaded *Not Guilty*,
 and a Jury was charg'd with him, the Prisoner
 making no Challenges to any of them.

Page 934.

Mr. *Darnel* having opened the Evidence, called
 the Witnesses; and first,

Page 935.

Mr. *George Wigmore* was Sworn.

Page 936.

He depos'd, That he ingrossed a Mortgage from
 Mrs. *Vanwicke*, to Dr. *Clenche*, for 120 l. and that
 at the executing the Mortgage, the Deponent, by
 Dr. *Clenche's* Order, paid Mrs. *Vanwicke* 60 l. the
 rest of the Consideration Money being paid be-
 fore. That Mr. *Harrison*, and Mr. *Rowe*, were
 there with Mrs. *Vanwicke*, and fell out about sha-
 ring the Money, and gave each other very ill Lan-
 guage. But at length, Mr. *Harrison*, and Mrs. *Van-*
wicke, paid Mr. *Rowe* 20 l. of the Money, for Bu-
 siness he pretended he had done for Mrs. *Vanwicke*;
 and Mr. *Rowe* went away.

Witnesses for
 the King
 call'd to
 prove that
 the Prisoner
 bore Malice
 against the
 Deceased.

L. C. J. Were there any Reproaches cast upon
 the Doctor, at that Time?

Wigmore. No, my Lord, only upon *Rowe*.

Mr. *Thomas Johnson* was Sworn.

He depos'd, That he was Attorney for Dr. *Clenche*,
 and sued Mr. *Rowe*, who was bound in the Bond,
 for performance of Covenants with Mrs. *Vanwicke*;
 but finding *Rowe* was not able to pay the Money,
 he delivered an Ejectment to Mrs. *Vanwick's* Te-
 nant of the House that was mortgaged. Where-
 upon, Mr. *Harrison* came to the Deponent, and
 express'd himself strangely against the Doctor;
 and laying his Hand upon his Sword, said, The
 Doctor had Cheated the Widdow, and he would
 be revenged of him. That Mr. *Harrison* prefer'd
 a Petition in Chancery, for Mrs. *Vanwicke*, against
 the Doctor; and finding she could have no Relief
 there, without paying the Mortgage Money, Mr.
Harrison grew very troublesome: And the Depo-
 nent offer'd him to abate Mrs. *Vanwicke* 20 l. of
 the Money, if she would pay the rest. That the
 Doctor directed the Deponent to transact the Mat-
 ter with them, in his own Name, for he did not
 care to have any thing to do with them. But whe-
 ther

ther it was, because the Doctor was afraid of his Life, or no, the Deponent could not say.

L. C. J. Was it before you offer'd to abate the 20 *l.* that he threatned the Doctor?

Johnson. Yes; And, I think, it was about three Weeks before the Doctor was murdered.

L. C. J. How came *Rome* to be intrusted, or concerned in the Money?

Johnson. He was Trustee for a Legacy of 500 *l.* that was left Mrs. *Vanwicke* and her Children, and so came into the Management of her Affairs.

Mr. George Howard was Sworn.

Page 937.

He depos'd, That being in Company with Mr. *Harrison* and Mrs. *Vanwicke*, she being then just come from Dr. *Clenche*; *Harrison* used several virulent Expressions against the Doctor, and among others, said, he was a Rogue and a Rascal, and deserved to have his Throat cut.

Mrs. Mary Sheriff was Sworn.

She depos'd, That Mrs. *Vanwicke* and Mr. *Harrison* came to her House; and Mrs. *Vanwicke* desired the Deponent to go with her to Dr. *Clenche*, which she did; and Mrs. *Vanwicke* desiring the Doctor to let her have 20 *l.* more, he said, he would lend her no more, so long as she kept Company with *Harrison*, for he would spend it; and told her, he would recommend her to be some Gentleman's House-keeper. And that though she ow'd him 120 *l.* he would take 100. That when they returned to the Deponent's House, Mrs. *Vanwicke* told Mr. *Harrison* what the Doctor said; and Mr. *Harrison* answered, God damn him, Would he have a Person of her Quality go to Service? He deserved to have his Throat cut: And added, Let me alone, I'll manage him as never Man was managed; and then Mrs. *Vanwicke* and *Harrison* went away together. That Mr. *Harrison* was always talking against the Doctor, and said, he was an old Rogue, and Mrs. *Vanwicke* was almost starved to Death.

Mrs. Elizabeth West, the Tenant of the House mortgag'd, was Sworn.

She depos'd, That Mr. *Harrison* came to her two or three Days before last St. *Thomas*, and desired

fired Rent for Mrs. *Vanwicke*; but she told him, she could not pay him, because Dr. *Clenche* had forbid her: And thereupon Mr. *Harrison* reply'd, Dr. *Clenche* and *Rome* are great Rogues and Villains; and the Deponent saying she believed the Doctor to be a very honest Man, he answer'd again, He is a great Villain, and will never die in his Bed. That a little before this, Mrs. *Vanwicke* and *Harrison* having press'd the Deponent for Rent, and she telling them she dare pay no more, Mr. *Johnson* having forbid her: *Harrison* said, *Johnson* was a Villain and a Rogue, and they had all combin'd to Cheat the Widdow. That Mrs. *Vanwicke* fell upon Mr. *Johnson* once, and said, She would tare his Throat out, but he got from her. And that the last Time the Deponent saw Dr. *Clenche*, she entreated him to let Mrs. *Vanwicke* have more Money; but the Doctor answer'd, She would never do any good with it, for she spent it all upon *Harrison*. And that he (the Doctor) said, he offer'd to recommend her to a Service, where she might have had 20 *l.* per *Ann.* and she abused him for it.

L. C. J. What Cloaths did the Prisoner wear.

Mrs. *West*. He had an old thread bare black Cloth Suit on.

Ann Watson was Sworn.

She depos'd, That the Day before *Christmas* Eve, the Prisoner came to her Master, Mr. *Garaway's* House, in *Threadneedle-street*, and said he was newly come out of the Country; and lodg'd there till the 1st of *January*, and then he went out, and did not return till *Sunday* the 3d of *January*, when he came and paid off his Lodgings, and fetch'd away his Things. That the Deponent giving him a Letter that was left for him, then, he said, It came out of the Country where he had a Friend Sick, from whom he expected a Legacy; and he intended to go down and see him: And, that on the 4th of *January*, he sent them a Letter, signifying he was gone out of Town. Which Letter being produc'd in Court, and shewn Mr. *Johnson*, he said he believed it to be Mr. *Harrison's* Hand; and it was read.—— The Letter was directed to Mrs. *Garaway*,

Page 938.

Proof of the Prisoner's often changing his Lodgings, and pretending he came out of the Country.

ramay, and signified, that the Prisoner was gone out of Town, and would return in a Week, or Ten Days; and was Dated 4 *January*, 1691.

Mrs. *Garaway* was also sworn, and deposed that she received the Letter the 4th of *January*.

Mrs. *Jackson* was Sworn.

She depos'd, That the Prisoner came to lodge at her Fathers, Mr. *Garaways*, the Day before *Christmas* Eve, and went away the 3d of *January*; but was absent some Nights, during that Time. That while he was at her Father's, she observed him to have a course Handkerchief, very like the Maid's Apron; which she thought strange, because he gave out he was a Parliament Man.—— Then the Coroner produc'd the Handkerchief with which the Doctor was strangled; and Mrs. *Jackson* aver'd it was the same she had seen Mr. *Harrison* hold to the Fire, or very like it. Then a piece of the Maid's Apron was produc'd, and they were compar'd together, and appear'd to be very like.

Mr. *Harrison*. Did you hear me say I was a Parliament Man?

Mrs. *Jackson*. Your Footboy said you was a Parliament Man, and so you said your self.

Another Letter of the Prisoner's, to Mrs. *Garaway*, since he was a Prisoner, was produ'd, and read; viz. *I was inform'd, Yesterday, that you are to appear against me at next Sessions: I am sure you never heard me mention Dr. Clenche; and if you do, it will look like Malice. My Lord Chief Justice is sensible of the Wrong done me.*

Page 939.

L. C. J. Mr. *Harrison*, Did I ever tell you was sensible of it? To which he made no reply.

Mr. *Cartwright* was Sworn.

He depos'd, That on the 3d of *January* last, in the Evening, being *Sunday*, the Prisoner came to the Counter, and the Deponent let him in: And the Prisoner ask'd for Mrs. *Vanwicke*, and said, She had been wrong'd of 500*l*. That about half an Hour after the Prisoner had been there, the Deponent's Master sent him to Mrs. *Vanwick's* Chamber, to demand Chamber Rent; and as he came to the Door, he heard the Prisoner and Mrs. *Vanwicke* very loud. And the Prisoner swore he would be

be reveng'd of that Rogue (and named either *Clenche* or *Winche*) and he would have his Blood e'er long.

Mrs. *Mary Jones* was Sworn.

She depos'd, That the Prisoner came to lodge at her House (the *Golden-Ball* in *St. Paul's Church Yard*) the *Monday* before he was taken; and that he said he came out of the Country.

James Houseman also depos'd, That the Prisoner came to lodge at Mrs. *Jones's*, about Eight at Night, and a Porter came with him, and brought a Portmanteau; and that a little after, the Porter went out, and the Prisoner follow'd him.

Mr. *Humston* was Sworn.

He depos'd, That he met the Prisoner the 4th of *January* (the Day Dr. *Clenche* was Murder'd) and, he said, he was going to get a Gentlewoman out of the *Counter*, who was oppress'd, and wanted Money to get her releas'd; and the Deponent gave him some. And about Nine that Evening, the Prisoner brought the Deponent his Gown (that he had borrow'd) to his Lodgings at the *Golden Key*, over against *Fetter-Lane* end, in *Fleetstreet*. And the Prisoner said, he had not got Mrs. *Vanwicke* released, having met with some People, with whom he had earnest Business, which prevented him. And the Deponent asking the Prisoner to stay and Sup with him, he refus'd, saying, He had some extraordinary Business, which must be done that Night; and a Gentleman waited for him in the Street, and they were going about it. That the Prisoner had a Cloak on when he was with him.

Hester King also depos'd, That the Prisoner was at Mr. *Humston's* Lodgings, the 4th of *January*, about Nine at Night, and that he had a Cloak on.

John Giles, the Coachman, was Sworn.

He depos'd. That on *Monday* the 4th of *January*, he set down a Fare at the *Green-Dragon* in *Fleetstreet*, about Nine in the Evening, and was driving from thence towards the Temple; and two Men, who stood about *Fetter-Lane* end, asked him if he knew Dr. *Clenche*, who lived in *Brownlow-street* in *Holbourn*? and the Deponent saying he knew the Street, they came into his Coach, and he drove

The Coachman's Evidence of the Prisoner's Murdering Dr. *Clenche* in his Coach.

Page 940.

them to the end of *Brownlow street*; and one of them bid him go and tell the Doctor, Two Gentlemen in a Coach desired him to go with them, to see one who was not Well. That the Doctor asked the Deponent if he knew them, but he said he did not; and the Doctor dressed himself (being before in his Gown and Slippers) and when he came to the Coach, one of the Men removed, and gave him the hinder part of the Coach, and bid the Deponent drive to *Leadenhall-Market*: And when he came about *Holbourn-Bars*, one of them bid him drive faster, which he did; and came to *Leadenhall*. Then one of them bid him drive to the *Pye Tavern* without *Aldgate*, where they bid him ask for one *Hunt*, a Surgeon, but no such Person was there. Then one of them bid him drive back to *Leadenhall*, and *Aldgate* being shut, they gave the Watch six Pence to open it; and when he stop'd again at *Leadenhall Gate*, one of them gave him Three Shillings and six Pence, and bid him buy a couple of Fowls of *Hunt* the Poulterer; but not being able to find such a Man, he bought them of another: And coming back to his Coach, he found Dr. *Clenche* (as he thought) sitting against the Fore-Seat, with his Head against the Cushion: That he pulled him, and called to him, but could not get a Word from him: And calling the Watch, he found he was strangled with a Handkerchief about his Neck, and a Coal in it, placed just upon his Windpipe; but the other two Men were gone.--- That he could not tell what Cloaths the Prisoner had on, but one of them had a light Wig, and he verily believed it was the Prisoner: And that the other Person was taller, and in his own Hair.

L. C. J. What Time did they leave your Coach?

J. Sykes. About half an Hour past Ten.

Mr. Darnel. Do you know that Handkerchief?

Then the Handkerchief was shewn him.

J. Sykes. I untied this Handkerchief, and here is the Coal that was lapped in the middle of it; and it lay just against the Doctor's Windpipe.

Mr.

Mr. *Rebone*, and Mr. *Marriot*, were Sworn.

Mr. *Rebone* depos'd, That the Coachman came to Mr. *Marriot's* House, and asked for a Constable; and they came to the Coach, and found the Doctor strangled with the Handkerchief, in the manner above describ'd: And they carried him to the *Bull Inn*, and let him Blood, but could get but little from him, or perceive any Life in him; and they secured the Silver Inkhorn he had in his Pocket, and the rest of his Things.

Mrs. *Ashbolt* was Sworn.

She depos'd, That being sent out of an Errand, that Night Dr. *Clenche* was Murdered, she saw a Coach stop at *Brownlow-street* end, between Nine and Ten a Clock: And one in the Coach, bid the Coachman go tell Dr. *Clenche*, that two Gentlemen staid for him in a Coach; and one of them lean'd out of the Coach, and swore at the Coachman, as he was going, that he made no more haste. That the Deponent went round the Coach, and could discern Mr. *Harrison's* Face: And she saw Dr. *Clenche* go into the Coach, and one of them gave his Place to the Doctor.

Page 94r.
Ashbolt's Evidence that she saw *Harrison* in the Coach with Dr. *Clench*.

Mr. *Darnel*. Tell us how you came to be so curious, and what you observ'd farther?

Mrs. *Ashbolt*. I thought they would give the Coachman the slip: And I well observ'd Mr. *Harrison*, there being a Lamp burning on each side the Coach, which lighted quite through; and when the Men saw me look at them, they pull'd themselves back. Afterwards, when Madam *Clenche* desired me to go see Mr. *Harrison*, in *Newgate*; he being talking very loud, I knew the Voice to be one of those that were in the Coach, before I came into the Room; and told the Company so that were with me. And I knew the Prisoner to be one of those who were in the Coach, as soon as I saw him.

Mr. *Harrison*. Why did she not make this Discovery sooner?

Ashbolt. I would have told it Madam *Clenche* sooner, but my Mother was loth I should be concern'd in such a Thing.

An Examination before the Coroner read, the Witnesses being withdrawn.

Then the Examination of *Andrew Bowfell* before the Coroner was read, upon Oath made by his Master, that he was enticed out of his Service by some Soldiers, and could not be found: Another Witness also deposing, That *Bowfell* told him a Gentleman offer'd him Money to be kind to Mr. *Harrison* before he went away.

The Examination was to this Effect, viz. That the Informant being sent to the *Bull-head Ale-house*, on *Monday* the 4th of *January*, between Ten and Eleven at Night, saw a Coach standing against *Leadenhall-Market*, and heard a Person in the Coach say make haste; and something about Poulterers as he thought: And that as soon as the Coachman was gone into the Market, the Informant saw two Persons go out of the Coach, and one of them he thought had a black Coat on, who after he came out, threw a Cloak over him; and then both the Persons went through the West Part of the Market: But that as the Informant was going to look into the Coach, the Man who had the Cloak on cry'd *damn him*, whereupon the Informant went away. And being further examined, He depos'd, That he believ'd the said *Harrison*, then a Prisoner in *Newgate*, was one of the Persons who came out of the Coach in *Leadenhall-Street*, and thought he knew him by his Voice—— That soon after the Informant heard the Doctor was murdered in a Coach; and it was the same Coach out of which the Two Men came.

Page 942.

Harrison's Defence.

Then Mr. *Harrison* enter'd upon his Defence and averr'd, That he had never any Quarrel either with Dr. *Clenche* or Mr. *Johnson*, and that *Rome* was the Person who kept their Money from them, and they had no manner of Occasion to be angry with the Doctor; and said he would call Witnesses to prove he was in another Place when the Murder was committed: And he call'd *Thomas Turner* a Porter, who depos'd only, that he carried a Trunk for Mr. *Harrison* from the *Two Kings* and *Key* in *Fleet-street*, to Mr. *Jones's* in *Paul's Church-Yard* on the 4th of *January*, about Seven in the Evening; and that he parted from him at Mr. *Jones's* about Eight that Night.

Mr.

Mr. *Harrison*. My Lord, Mr. *Humston* mistakes an Hour.

Mr. *Humston*. I cannot mistake an Hour because the Shop is shut up about Nine, and it was shut when you came.

Mr. *Thomas Johnson* was call'd.

He depos'd, That he liv'd at the *Golden Key* where Mr. *Humston* lodged, and he let Mr. *Harrison* in that Night; and it was about Nine a Clock when he came and enquired for Mr. *Humston*.

Mr. *Maccaffee* was call'd.

He deposed, That he lived in *Chancery-lane*, over against *Serjeant's-Inn*; and on the 4th of *January* the Prisoner was at his House from Nine in the Evening 'till past Eleven, and played at Cards there with one Mr. *Baker*, and Mr. *White* and his Wife.

The Prisoner] calls Witness who de-
pose, He was
at another
Place when
the Fact was
committed.

L. C. J. Did he tell you where he had been before?

Mr. *Maccaffee*. He said he had been towards the City, and was very cold: And they played at Cards in the Kitchen.

L. C. J. How came you to take Notice of the Day and Hour?

Maccaffee. I heard Dr. *Clenche* was murdered, and *Harrison* was tax'd with it; and that made me take Notice of it.

Mrs. *Maccaffee* also was call'd, and confirm'd what her Husband had deposed; That Mr. *Harrison* came to their House at Nine, and staid 'till Eleven, and said she remembered it by their playing at Cards; and a Pick-pocket being carried by to be pumped that Night.

L. C. J. Did any one come with the Prisoner? In what Humour was he?

Mr. *Maccaffee*. No body came with him: He did not seem at all disordered.

Mr. *Darnel*. How many were at your House?

Mr. *Maccaffee*. There was Mrs. *Fairless*, Mr. *White* and Mr. *Baker*; and Mr. *White* came for his Wife about Ten a-Clock.

Mr. *Baker* was call'd.

He depos'd, That he came into Mr. *Maccaffee's* House with Two Women, about half an Hour after Nine that Night, and they would have him play'd

play at Cards; and that Mr. *Fairless* and the Deponent were together, and the Woman of the House and Mr. *Harrison*: That they play'd for a Penny a Corner, and the Deponent left them about Ten a-Clock.

Mr. *Harrison*. Were there not some Accidents happened at that Time?

Baker. Yea, there was a Pick-pocket carried up the Lane to be pumped; and a Vintner's Boy came in great Haste for one Mrs. *Francis*.

Mr. *Sutton* was call'd.

He deposed that the Night the Doctor was murdered, he was drinking with one Mr. *Russel*, at the *King's-Head* at *Chancery-lane* End, and about a Quarter before Eleven Mr. *Harrison* came by, and the Deponent believes he had a Cloak on: That *Harrison* was going towards *Fleet-bridge*, and they call'd after him, and he came to them.

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Mr. *Russel* also being call'd depos'd, That *Harrison* went by them as they were drinking at the *King's-Head* at *Chancery-lane* End, about Eleven a-Clock; and that Mr. *Sutton* call'd after him, and he came to them: That the Deponent and Mr. *Sutton* were in a Coach, and they stopt at the *King's-Head* 'till Mr. *Sutton* sent for somebody.

John Allen, the Drawer of the *King's-head*, was call'd.

He depos'd, That about Eleven a-Clock that Night Dr. *Clenche* was murdered; Mr. *Sutton* and Mr. *Russel* came to the *King's-Head* in a Coach and drank Two Pints of Canary, and one of them sent him to *Maccaffee's* in *Crown-Court*, to a Servant-Maid, to desire her to come to them.

Harrison. Did not one strike you with a Muff?

J. Allen. Yes, but I cannot remember who it was.

Mr. *Carden*, the other Drawer of the *King's-Head*, was call'd.

He depos'd, That Mr. *Sutton* came to their House in a Coach about Eleven a-Clock that Night the Doctor was murdered; that he saw a Man stand by the Coach-side, whom, to the best of his Knowledge; was the Prisoner at the Bar.

Mr. *Coroner*. Were not your Doors shut? And don't you usually keep them open 'till after Eleven a *Monday* Nights?

Carden.

Carden. We generally shut them after Eleven a *Monday* Nights, and the Doors were shut when they came.

L. C. J. It behoves you Mr. *Harrison* to give an Account of these Things: Why you said you were a Parliament Man, Why you left your Lodgings, and what your extraordinary Business was: And who that Gentleman was that staid for you in the Street when Mr. *Humston* would have had you supped with him; and why you refused his Invitation.

Harrison. I never said I was a Parliament Man: But I was going into the Country to *Basingstoke*, to one Mr. *Bulling* that owed me Money; but can't prove it, except I could send to *Basingstoke*: I was unwilling to stay with Mr. *Humston* because he had Strangers with him that Night.

Then Mr. *Butler* was brought from *Newgate* to be a Witness, but he only said, He could not tell what to make of Mr. *Harrison's* rambling Speeches about the Murder of the Doctor.

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Mrs. *Anwell* was call'd and Sworn for the King.

She depos'd, That the Night Dr. *Clenche* was murdered she sent Mrs. *Ashbolt* of an Errand, and blaming her for staying so long; she said as she was coming home, she saw a Coach stop at *Brownlow street* End, and Two Men with Cloaks in it; and one of them sending the Coach-man for Dr. *Clenche*, the Coach-man look'd back as if he suspected the Men would leave the Coach, and so she staid 'till the Doctor came to the Coach; and one of the Men gave him Place.

Other Witnesses examined for the King.

Mr. *Darnel.* What Discourse had you with her when you heard of the Murder?

Mrs. *Anwell.* She told me that one of those Men had a fair Wig and a sanguine Complexion; a round Face and a big Voice; And she thought she should know his Voice again.

L. C. J. Pray, Why did she not discover this sooner to Mrs. *Clenche*.

Mrs. *Anwell.* Because her Mother was unwilling she should be concerned in the matter.

Mr. Jones was call'd again.

He deposed, That he went to *Newgate* with Mrs. *Ashbolt*, and that hearing Mr. *Harrison* speak before she came into the Room where he was, she said, to the best of her Thoughts, that was the Man that put his Head out of the Coach and swore at the Coach-man: And when she saw him, she declar'd that was the Man.

L. C. J. Can you take it upon your Oath Mrs. *Ashbolt*, that the Prisoner is the same Person?

Mrs. *Ashbolt*. Yes, my Lord, I can both by his Voice and Face.

L. C. J. Mrs. Jones, What Time did Mr. *Harrison* come to your House to his Lodging that Night Dr. *Clenche* was murdered?

Mrs. Jones. I think it was before Eleven.

The Prisoner's Witnesses prov'd to be Men of no Credit.

Page 946.

No Averment against a Record, and yet Witnesses permitted to be examined, as to the Truth of it.

Then Mr. *Darnel* produc'd a Record, to prove that *Baker*, one of the Prisoner's Witnesses, was convicted of cheating the Parish of *St. Giles's* when he was Scavenger, by altering the Figures in the Book, and then extorting greater Sums of the Parishoners than they ought to pay: *Baker* desiring to call Witnesses to prove he was acquitted on that Indictment, the Chief Justice gave him to understand there was no averring against a Record; however he permitted his Witnesses to be examined: Who contrary to *Baker's* Expectations, deposed, That he was deservedly convicted on the said Indictment, and was a Man of a very ill Character.

Mr. *Darnel* call'd two other Witnesses who liv'd overagainst *Maccaffee's* House in *Chancery-lane*, who depos'd, That *Maccaffee* kept a very disorderly House, where Thieves and House-breakers, and lewd Women resorted; and his House had been searched by the Constables for stoln Goods, &c.

Mr. *Charles Whitfield* was call'd.

He depos'd, that being at *Joe's* Coffee-House in *Salisbury-Court*, the Day after Dr. *Clenche* was murdered, he saw Mr. *Harrison* sitting by the Fire; and asking him where he had been, he had not seen him a long Time, *Harrison* answered, about Twenty Miles off in *Kent*: Then the Deponent asking him if he had not heard of the Murder of Dr. *Clenche*, *Harrison* said it was a just Judgment

Judgment of God upon the Doctor, for he had been a barbarous Rogue to a Gentlewoman a Friend of his in the *Compter*; and presently *Harrison* wrote a Letter to the Gentlewoman to acquaint her with the Doctor's Death, and directing her to apply herself to Mrs. *Clenche* for something, she being then a Widdow as well as her self—— That after this, one Mr. *Ravenscroft* came into the Coffee-House and said, he heard Dr. *Clenche* was murdered by a Bully of the Town, that belong'd to a Gentlewoman in the *Compter*; at which *Harrison* was much startled, [and said there was no Person familiar with that Gentlewoman but himself, and perhaps he might be taken up for it —— That the Deponent thought it strange *Harrison* should pretend he had been out of Town a Fortnight or Three Weeks, when he was at *Joe's* Coffee-House but the Night before.

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One *Bishop* was call'd to prove the Prisoner had used some unfair Dealings, but the Chief Justice said they were not to arraign his whole Life; and *Bishop* was not admitted to give Evidence.

Witnesses not permitted to be examined as to any other Crimes the Prisoner had committed.

Page 948.

Then the Lord Chief Justice sum'd up the Evidence very impartially, and the Jury withdrew to consider of their Verdict; and after half an Hours Recess they brought the Prisoner in Guilty of Wilful Murder: And the last Day of the Sessions the Prisoner receiv'd Sentence of Death.

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N. B. *The Examination of the Prisoner when he was apprehended and carried before the Lord Chief Justice Holt, the 6th of January 1691, is added in the larger Work; but there being nothing material in it but what is to be found in the Tryal, it is omitted here.*

Page 950.

The

Page 951.

The Tryal of JOHN COLE, at the Old-Bailey, London; the 31st of August, 4 W. and M. 1692, for the Murder of Dr. Clenche.

The Indictment the same with that in the preceding Tryal of *Harrison*.

THE Indictment was the same with that in the preceding Tryal of *Harrison*, *mutatis mutandis*; to which the Prisoner pleaded *Not Guilty*: and a Jury was charg'd with him (he making no Challenges to any of them.)

The Witneses being call'd and Sworn, *Mary Milward* was first set up.

Just. *Dolben*. What have you to say against the Prisoner, concerning the Murder of Dr. *Clenche*.

She deposes what her deceased Husband told her.

Mrs. *Milward* depos'd, That her Husband told her that he and the Prisoner committed the Murder in the Coach; and she said that she would have discover'd it sooner had she known where to find the Prisoner.

Page 952,

Just. *Dolben*. What your Husband told you is no Evidence, unless you know somewhat of your own Knowledge: Who prosecutes upon this Indictment?

Mr. *Wise*, Brother-In-Law to Mrs. *Clenche*, appear'd.

Mr. *Wise*. My Lord, Mrs. *Milward* is the Prosecutor, who told my Sister that her Husband before his Death, confess'd he and *Cole* murdered the Doctor; and said she had sufficient Evidence against *Cole*: My Sister said Mr. *Harrison* with another, whom she believed to be her Husband, murdered Dr. *Clenche*; but that she suspected others were concerned: So I went with Mrs. *Milward* to all her Witneses, and took Notes of their Evidence; and told her I could find nothing that would convict Mr. *Cole*: She seem'd dissatisfied, and said she was not able to prosecute; on which my Sister told her, if she would prefer an Indictment, she would pay for that and other Charges. *Gamble* stood up,

Just,

Just. *Dolben*. You Coachman, Do you know the Prisoner?

Mr. *Gamble*. No truly my Lord, I took Three Men into my Coach in *Cheapside*, set one of them down at *Grays-Inn*, and drove the other Two to Dr. *Clenche's* House the same Night he was murdered, and he was not at home; the Man I set down came in again, and I drove them all to the *Blew Boar's-Head* Ale-house, near *Clement's-Inn* Gate.

William Brown set up.

Just. *Dolben*. Is the Prisoner one of the Three Men the Coachman set down at your Master's House, the Night Dr. *Clenche* was murdered.

Brown. Yes my Lord, They came about Eight at Night; *Milward* went out before Nine, and returned not 'till after Eleven; but this Man (*Cole*) and the other stay'd in the House all the Time, and never went out 'till after *Milward's* Return.

Which is contradicted by another Witness.

Mr. *Dalley*, the Master of the House, depos'd, That the Two Men who came with *Milward*, did not go out of his House that Night; but could not say the Prisoner was one of them.

Page 953.

Mr. *Wife*. Mrs. *Milward* has Two Witnesses more, who know somewhat more of the matter.

Sykes the Coachman stood up, and being ask'd what sort of Men he took up, he depos'd to the same Effect, and in near the same Words he had done in the preceding Tryal of Mr. *Harrison*. See N^o. 939, 940.

Page 954.

Then *John Dudley* was call'd, (*who appear'd*.)

Mr. *Dudley*. Mr. *Milward* came to me into the Country presently after the Doctor's Death, and told me he came away about the Murder of him; and he said he was not concern'd in it, but there was a Warrant out against him: He told me also, that Mr. *Harrison* had sent to him from *Newgate*, and offer'd him Twenty Pounds if he could make his Tryal easy: And Mr. *Milward* used to enquire if he were in the *Gazetts* or News-Letters, and if Mr. *Cole* and *Harper* were not taken up about the Murder.

Mrs. *Milward*. Call Mr. *Hobbs*, [*who stood up*.]
He

He depos'd, That drinking with Mr. *Milward* in *York-Buildings*, he ask'd the Deponent if he heard he was accused about the Murder of Dr. *Clenche*, and the Deponent told him no, and that *Milward* never said any thing to him about the Prisoner.

Justice *Dolben* directs the Jury.

Justice *Dolben* in summing up the Evidence observ'd, " That the Testimony of Mrs. *Milward*, " who depos'd nothing but what her Husband " told her, was not sufficient Evidence to " convict the Prisoner, without other Circum- " stances (though her Husband was dead) especi- " ally being contradicted by two other Witnes- " ses of her own producing : And further, that " *Harrison* had been convicted of this very Mur- " der ; and had the Prisoner produc'd the Record " of that Conviction it would have been another " Evidence of his Innocence.

The Prisoner is acquitted.

The Jury having considered of their Evidence brought in their Verdict, That the Prisoner was *Not Guilty*.

Page 955. *The Tryal of CHARLES Lord Mohun, before the House of Peers ; for the Murder of WILLIAM MOUNTFORD, the 31st of January, 4 W. and M. 1692.*

The Lords sit in *Westminster-Hall*.

THE Lords came down from their House in their usual Order, to the Court erected for them in *Westminster Hall*, about Twelve a Clock : And after their Lordships were seated and Proclamation made for Silence, His Grace the Lord High Steward, desired their Lordships would please to stand up, and be uncovered while their Mejesties Commission was reading ; and accordingly His Grace and all the Peers stood uncovered while the Commission was read.

Page 956. The *Certiorari* and Return, &c. read.

Then the Writ of *Certiorari*, directed to the Commissioners of *Oyer* and *Terminer* for the County of *Middlesex* ; and to remove the Indictment found before them, with the Return thereof ; and the Record of the Indictment were read : After

ter which the Governour of the Tower being call'd to Return his Precept, and bring his Prisoner to the Bar: The Lord *Mohun* was brought to the Bar, the Gentleman Goaler of the Tower carrying the Ax before him.

The Prisoner brought to the Bar.

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The Lord High Steward acquainted the Prisoner that he was not to hold up his Hand, and that in what he had to say, he must address himself to the Lords: Then my Lord High Steward made a Speech to the Prisoner, shewing the greatness of the Crime he stood charg'd with, and the Equitable Proceedings he might expect to meet with in his Tryal; it being before the Lords in full Parliament.

{ Marquis of Carmarthen.

A Peer need not hold up his Hand.

After which the Prisoner was arraigned.

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The Indictment for Murder.

The Indictment sets forth, " That the said
 " *Charles Lord Mohun* (together with one *Richard Hill*, who was fled) not having the Fear
 " of God before his Eyes, &c. On the 9th Day
 " of *December*, in the Fourth Year of the King and
 " Queen, in the Parish of *St. Clements Danes*, in
 " the County of *Middlesex*; in and upon one
 " *William Mountford* of his Malice Afore-
 " thought, did make an Assault. And that the
 " said *Richard Hill*, a certain Rapier made of
 " Iron and Steel, of the Value of 5 s. which he
 " held drawn in his Right Hand; in and upon the
 " Right Side of the Body of the said *Will. Mount-*
 " *ford*, near the Right Pap; wilfully and of the
 " Malice Aforethought, did strike and thrust, gi-
 " ving the said *William Mountford* thereby One
 " mortal Wound, the breadth of One Inch, and
 " the depth of Twenty Inches, of which said
 " mortal Wound, the said *William Mountford*
 " having languished until the 10th of the same
 " Month of *December* died. And that the said
 " *Charles Lord Mohun*, at the Time of the Felo-
 " ny and Murder aforesaid, feloniously, wilfully,
 " and of his Malice Aforethought; was present,
 " aiding, abetting, comforting and assisting the
 " said *Richard Hill*, to kill and murder the said
 " *William Mountford* in manner aforesaid; against
 " the Peace of the said King and Queen, &c.

To which Indictment the Lord *Mohun* pleaded
Not Guilty. Then

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Page 960.

Then Mr. Serjeant *Thomson* open'd the Indictment, and Mr. *Attorney General* shew'd the Nature and Course of the Evidence. After which, the Witnesses were call'd: And first,

Mr. *John Hudson* was Sworn.

Page 961.

Att. Gen. Give my Lords an Account of what you know of Mr. *Hill's* Courting Mrs. *Bracegirdle*, and what you have heard *Hill* say about her?

The Evidence
against the
Prisoner.

Hudson, Three Nights before Mr. *Mountford* was kill'd, being at Supper with my Lord *Mohun* and Mr. *Hill*, at the *Rose* Tavern; Mr. *Hill* began a Discourse about Mrs. *Bracegirdle*, and said, He did not doubt of succeeding in his Amour with her, if he was not obstructed by *Mountford*, whom he design'd to be the Death of. (But I can't say my Lord *Mohun* took Notice of what he said.) And this I heard Capt. *Hill* say, not only then, but several Times before.

Att. Gen. Do you know any Thing more of this Matter?

Hudson. That Night Mr. *Mountford* was kill'd, I saw Mr. *Hill* and my Lord *Mohun* change Cloaths at the Play House; my Lord *Mohun* had Captain *Hill's* Coat on, and Mr. *Hill* had my Lord *Mohun's* on.

Mr. *George Powell* was Sworn.

Att. Gen. Pray give my Lords an Account, what you know of this Matter?

Powell. About five or six Days before Mr. *Mountford* was wounded, I was in Company with Mr. *Hill*, who began Mrs. *Bracegirdle's* Health; and said, There was no Bar between him and her, but *Mountford*; and he was resolv'd to be reveng'd on him one way or other. Three Nights afterwards, I was at Supper with my Lord *Mohun* and Capt. *Hill*, and the same Discourse arising again, *Hill* whisper'd me, and said, He was resolv'd to have the Blood of *Mountford*.—— And that Night Mr. *Mountford* was wounded, I sat up with him; and asking him how the Matter happen'd, he told me, Capt. *Hill* kill'd him basely: For whilst my Lord *Mohun* talk'd to him, *Hill* run him through. And that his Sword was not drawn, till after he receiv'd the Wound.

Evidence, that
Hill run the
Deceased
through, while
my Lord *Mo-*
bun talk'd
with him.

Mrs.

Mrs. Knight was Sworn.

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She depos'd, That about four Days before Mr. *Mountford* was kill'd, discoursing with Mr. *Hill*, he said, He was satisfied Mrs. *Bracegirdle* hated him; but she lov'd somebody, and he had thought of a way to be even with that Body. That afterwards, *Hill* desired the Deponent to speak to Mrs. *Bracegirdle* for him, and that she would give her a Letter from him. And upon her answering, she did not care to make herself Enemies; *Hill* reply'd, Do you mean *Mountford*? and swore, he should find a way with him speedily.

Mrs. *Elizabeth Sandys* was Sworn.

Att. Gen. Were you with my Lord *Mohun* and *Hill*, that Day Mr. *Mountford* was kill'd?

Sandys. I Din'd with them at the *Three Tuns* in *Shandois-street*; and discoursing of Mrs. *Bracegirdle*, my Lord *Mohun* ask'd me, If I thought *Mountford* had lain with her? and presently after, says my Lord, This Design will cost *Hill* Fifty Guineas. Says Mr. *Hill*, If the Villain offers to resist, I will stab him. Says my Lord *Mohun*, I will stand by my Friend. Soon after, *Hill* desir'd Mr. *Brough* to borrow a Case of Pistols of Capt. *Leister*; for he doubted, if the Captain knew of the Design, he would not lend them to him. And *Hill* added, that he had a Coach and Six in *Wich-street*, to seize Mrs. *Bracegirdle*, and carry her into the Country. And desir'd my Lord *Mohun* to meet him at the Play House at Six, or he should be ruin'd, And my Lord gave him his Honour to meet him, and said, *He would stand by his Friend*.

That the Lord *Mohun* said he would stand by *Hill* in his Design upon Mrs. *Bracegirdle*.

————— *Rogers* was Sworn.

She depos'd, That she saw my Lord *Mohun* and Mr. *Hill*, at the Play House, that Night *Mountford* was kill'd; and that which made her take Notice of it, was, they had chang'd Coats.

William Dixon (of whom *Hill* hir'd the Coach) was Sworn.

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He depos'd, That Capt. *Hill* and my Lord *Mohun* bargain'd with him for a Coach and Six, to carry them to *Totteridge*, by *Barnet*. That they directed him to come to the Play House, with a Pair only, and let the other Four stand at *St. Giles's* Pound.

Pound. That he came, accordingly, to *Drury-Lane*, and they bid him drive down lower, which he did, and stood at my Lord *Clare's* Door; where were some Soldiers, that would have had him drunk with them. That soon after, my Lord *Mohun* and Mr. *Hill* came into his Coach, and he drove them (as they bid him) to *Norfolk-street*, where he set them down. That having waited for them a pretty while, they came, and bid him drive to *Drury-Lane* again, which he did; and stop'd at my Lord *Craven's* House: And it being about Ten at Night, the Deponent went home, and sent his Postilion to take care of the Coach.

Att. Gen. Did you hear them say any Thing in *Norfolk-Street*?

Dixon. *Hill* said, There was a Man and a Maid talking, and that they were betray'd; and added, *Damme, my Lord, let us go and thresh him.*

Lord *Mohun.* Had he not Orders to go out of Town with us, as soon as Mrs. *Bracegirdle* was put into the Coach?

Dixon. I had Orders (when we should go out of Town) to drive down into the *Strand*; and from thence, to go the readiest way to the Pound: And had no other Orders.

Mrs. *Ann Bracegirdle* was Sworn.

Att. Gen. Pray give an Account, of the Attempt that was made upon you in *Drury-Lane*.

Mrs. *Bracegirdle's* Evidence of the Attempt made on her by *Hill* and the Lord *Mohun*.

Mrs. *Bracegirdle.* Having supp'd at Mr. *Page's*, in *Prince's* Street; about Ten, Mr. *Page* went home with me, and my Mother and Brother: And coming down *Drury-Lane*, there stood a Coach by my Lord *Craven's*; the Boot of the Coach was down, and my Lord *Mohun* was in it. And two Soldiers came and pull'd me from Mr. *Page*; and four or five more came up, and they almost knock'd down my Mother; but she recover'd herself, and hung about my Neck, so that they could not get me into the Coach: And Mr. *Page* went to call Company to rescue me. Then *Hill* came with his naked Sword, and struck at Mr. *Page* and my Mother; but Company coming in, prevented the Design. Then *Hill* said he would see me home, and led me by one Hand (his Sword being drawn) and my

my Mother by the other : And my Lord *Mohun* came out of the Coach, and follow'd us, as did all the Soldiers ; but they were dismiss'd. And as we went along, Mr. *Hill* said, he would be reveng'd. And when we came home, Mr. *Hill* pull'd Mr. *Page* by the Sleeve, and said he would speak with him : But Mr. *Page* was pull'd into the House, and Mr. *Hill* walk'd up and down the Street, with his Sword drawn.----- My Lord *Mohun* and Mr. *Hill* were together ; and when Mrs. *Brown* ask'd them, What they staid there for ? *Hill* answer'd, To be reveng'd of Mr. *Mountford* : Whereupon, we sent to Mrs. *Mountford*, to prevent Danger. And as I was listening at the Door, the Watch came by, and said to my Lord *Mohun* and Mr. *Hill*, Gentlemen, Why do you walk with your Swords drawn ? Says my Lord *Mohun*, *I am a Peer of England, touch me if you dare.* Then the Watch went away, and about a Quarter of an Hour after, there was a Cry of Murder.

Mr. *Gawen Page* was Sworn.

He depos'd, That on *Friday* the 9th of *December*, about Ten at Night, as he was leading Mrs. *Bracegirdle* home, there stood a Coach against my Lord *Craven's* Door, in *Drury Lane* : And two Soldiers forced Mrs. *Bracegirdle* from him, and would have put her into the Coach. And that Capt. *Hill* was there with his drawn Sword, and gave the Deponent several Blows ; and cry'd, *You Villain stand !* And my Lord *Mohun* was in the Coach : But help coming in, they were prevented carrying off Mrs. *Bracegirdle*. Then the Deponent convey'd Mrs. *Bracegirdle* home, and Mr. *Hill* went with them ; (but bid the Soldiers be gone) and my Lord *Mohun* followed at a distance. That when they came to Mrs. *Bracegirdle's* Lodging, *Hill* pulled the Deponent by the Sleeve, and said, He would speak with him : And the Deponent answering, That To-morrow would do better ; *Hill* reply'd, *To-morrow then : But God damn me, you will not go home to Night.* Then the Deponent went into the House and about an Hour and half after, he heard an Outcry of Murder ; and going into the Street, he saw my Lord *Mohun* surrendering himself to the Constable ; and my Lord's Sword was then in the Scabbard.

Evidence that
Mountford was
run through
before he
could draw
his Sword.

bard. That the Deponent then went to Mr. *Mountford's* House, and found him lying in his Blood on the Floor. And *Mountford* told the Deponent, *That he was barbarously run through, before he could draw his Sword.*

Mrs. *Mary Page* Sworn.

Att. Gen. Pray acquaint my Lords, what you observed that Night Mrs. *Bracegirdle* Supp'd at your House?

Evidence of
my Lord *Mohun's* Sword
being drawn
just before
the Murder.
Page 966.

Mrs. *Page.* My Lords, my Husband went home with her; and hearing he had like to have been Murdered, I went down to Mrs. *Bracegirdle's* Lodgings; and found my Lord *Mohun* and Mr. *Hill*, walking about the Street. (But Mr. *Hill's* Sword only was drawn then) So I came into the House, and Mrs. *Brown* went out to them, and ask'd, Why they staid there? And *Hill* answer'd, They staid for *Mountford*. Whereupon, Mrs. *Bracegirdle* desired me to go over to Mrs. *Mountford's* House, and speak to her, to send her Husband Word, That he should keep where he was, or come Home with a good Guard: And as I was going over, I saw that my Lord *Mohun* had his Sword drawn. They were then walking before Mrs. *Bracegirdle's* Lodgings, in *Howard-street*. (And might see any one that went to Mr. *Mountford's* House, and up *Surrey-street*) And whilst I was desiring Mrs. *Mountford* to send away to her Husband, I heard Murder cry'd; and opening Mr. *Mountford's* Door, he came in, and threw his Arms round my Neck, to support himself: And he said, *Hill* had Murder'd him. And I help'd him as far as the Parlour Door, and then down he fell. Then I went up the Street, and call'd out Murder; and my Lord *Mohun* came to me, and bid me take Notice he had no Hand in it; for, he said, his Sword was not drawn. And I reply'd, he was with *Hill*, with his naked Sword, but just before.

Lord *Mohun.* I desire she may be ask'd, If I did not surrender my self?

Mrs. *Page.* Not till I desired the Constable to secure your Lordship?

Lord *Mohun.* Did I make any Opposition, or offer to run away?

Mrs. *Page.* No, for the Constable immediately laid hold of your Lordship.

Mrs.

Mrs. Brown was Sworn, (at whose House
Mrs. Bracegirdle lodg'd.)

She depos'd, That when Mrs. Bracegirdle came home, she cry'd, and related how my Lord Mohun and Mr. Hill, with some Soldiers, would have forced her into a Coach; and added, that my Lord Mohun, and Hill, were then at the Door. That thereupon the Deponent went out to them, and ask'd, Why they us'd Mrs. Bracegirdle in that manner? and my Lord Mohun answered, *He protect'd her; and if it had not been for him, the Rabble would have torn her in pieces. That he had no Design upon her, for his part, but only to serve his Friend: And that Mr. Hill's Design, was to take her out of Town, and keep her a Week, and see if he could persuade her to Marry him.* That Hill said, *He should light of this Mountford: And the Deponent demanding, What Hurt Mountford had done him? Hill reply'd, I have been Abus'd, and will be Reveng'd.* And the Deponent went and told Mrs. Mountford of it. That half an Hour after, or more, the Deponent saw Mr. Mountford coming down the Street; and she went to him, but he would not stay to let her speak to him: And presently after, Mountford met my Lord Mohun, and there pass'd several Complements between them. And my Lord told Mr. Mountford, he had a great Respect for him, and desir'd they might have no Difference; but added, Here is a Thing fallen out between Mrs. Bracegirdle and Mr. Hill.—— Mountford reply'd, Has my Wife disoblig'd your Lordship? If she has, she shall ask your Pardon. But Mrs. Bracegirdle is no Concern of mine; I know nothing of this Matter; I come here by Accident: But I hope your Lordship will not vindicate Mr. Hill in such Actions as these are. Upon this, she heard Mr. Hill bid Mr. Mountford draw; and Mr. Mountford said he would, and drew his Sword. But whether Mr. Mountford receiv'd his Wound, before, or after he drew his Sword, she could not tell.

My Lord professes a great Respect and Esteem for Mountford, at the time he was wounded.

Lord Mohun. Did I go up the Street to meet Mr. Mountford?

Mrs. Brown. Mr. Mountford came down to him.

Lord Mohun. Was Mr. Mountford's Sword within his Arm, or by his Side.

O 2

Mrs.

Mrs. Brown. I believe it was by his Side.

Lord Mohun. Could not Mr. Mountford have gone Home, without coming by Mr. Hill and me?

Mrs. Brown. It was out of his Way to his own House, to come by them: He came, as if he was coming to mine.

Lord Mohun. Did I meddle with Mountford? Had I any Hand in Killing of him?

Mrs. Brown. Not that I saw.

Richard Row was Sworn.

He depos'd, That being in his House in *Surrey-street*, about a Quarter after Ten at Night, he heard a Noise, and went out, and saw two Gentlemen, and two Lads; and one of the Lads had one of the Gentlemen by the Arm, and said, *Pray my Lord, Good my Lord, don't do it! --- Alter your Resolution.* And there was Answer made, *That they would be reveng'd.* That then the Deponent knew none of them; but that they went to the upper end of the Street, and return'd again; and he saw Captain Hill's Boy following him: But that Captain Hill was not in the same Cloaths he us'd to come to the Deponent's House in. That he could not swear my Lord Mohun was one of the Gentlemen, for the Deponent had never seen my Lord Mohun.

William Merry, the Watchman, Sworn.

Evidence of the Watch meeting my Lord Mohun and Mr. Hill, with their Swords drawn, before Mrs. Bracegirdle's Lodgings.

Page 968.

He depos'd, That he was walking his Rounds between Eleven and Twelve a Clock; and as he turn'd out of *Surrey-street*, into *Howard-street*, he saw my Lord Mohun and Mr. Hill walking upon the pav'd Stones, with their Swords drawn. And the Deponent bidding them put up their Swords, my Lord Mohun put up his, and offer'd it to the Deponent. And afterwards the Constable coming, my Lord offer'd his Sword to him; but Mr. Hill's Sword continued drawn, for, they said, he had lost his Scabbard. That the Deponent seeing some Women at a Door, with Candles, and a Neighbour's Man, with a Bottle and Glafs, he ask'd what the Meaning of this was? and they told him, one of the Gentlemen had a Sweetheart there. And my Lord said he was drinking a Lady's Health, and as soon as his Bottle was out, he would be gone. That the Deponent, and the Constable, &c. went

went into a House, to enquire further of the Business; and soon after they heard Murder cry'd, and went back again: And the Constable got to the Place first, and had seiz'd my Lord before the Deponent came up.

Thomas Fennel, another of the Watchmen, Sworn.

He depos'd, That my Lord and Mr. *Hill* had both their Swords drawn, when the Watch met them; but that my Lord put up his. And the Deponent added, that he was sent to call the Constable: And that this was between Eleven and Twelve at Night, about a Quarter of an Hour before the Murder was committed.

James Basset, another of the Watch, Sworn.

He depos'd, That they met my Lord and Mr. *Hill*, both with their Swords drawn: And that they [*the Watch*] went to the Tavern in *Norfolk-street*, to enquire who they were, and what they were doing? and in the mean Time the Murder was committed.

Lord *Mohun*. Did he come with the Constable, when I surrendered my Self?

Basset. Yes; And I took hold of your Sleeve, and you shook and trembled, as if you would tear it to pieces: And I had him to the *Round-House*. (His Sword was in the Scabbard when he surrendered it: I saw him surrender himself to the Constable.)

Mrs. Bremer was Sworn.

She depos'd, That she liv'd next Door to Mrs. *Bracegirdle*, and that she saw Mr. *Mountford* come down the Street, and my Lord *Mohun* went to him and embrac'd him; and after some mutual Salutations, Mr. *Mountford* ask'd, What made his Lordship there at that time of Night? and my Lord answer'd, I suppose, Mr. *Mountford*, you are sent for; you have heard of the Business of Mrs. *Bracegirdle*: And *Mountford* reply'd, No, indeed, I came by Chance. That then Mr. *Hill* came up, and said, Pray, my Lord, hold your Tongue; this is not a convenient Time to talk of this Business; and would have drawn my Lord away. And Mr. *Mountford* said, He was sorry to see his Lordship assist Capt. *Hill* in so ill an Action; and desired his Lordship to forbear. Whereupon,

Evidence of the Terror my Lord *Mohun* was in when he was taken.

Page 969. Of my Lord's embracing *Mountford*,

Evidence that
Mountford was
run through
before his
Sword was
drawn, and
while my
Lord Mohun
was by him.

Page 970.

Hill came up, and struck *Mountford* a Box of the Ear. (Says *Mountford*, Damme, What's that for?) and immediately *Hill* made a Pass at him with his Sword, before *Mountford's* Sword was drawn. My Lord, and They, were all close together at that Time, as well as I could discern.

Davenport the Constable, Sworn.

He depos'd, That his Beadle told him, he saw the Gentlemen with their Swords drawn; but when the Deponent came up, my Lord *Mohun's* Sword was in his Scabbard, and he offer'd to surrender it; and said, he was a Peer of the Realm. That the other Man said he had lost his Scabbard in *Drury Lane*. That the Deponent went to the *White Horse Tavern*, to enquire into the Business, and he had no sooner got in, but they cry'd out Murder! And the Deponent came back, and took my Lord *Mohun*, but Mr. *Hill* was escap'd. That when they came to the *Round House*, my Lord said, *God damn me, I am glad Hill is not taken; but I am sorry he has no more Money about him: I wish he had some of mine, and I do not care a Farthing if I am hang'd for him.* But he confess'd, my Lord surrendered himself to him very civilly. — The Deponent added, that my Lord *Mohun* said, he had changed Coats with Mr. *Hill* four or five Times that Day; and that he had, then, *Hill's* Coat upon his Back. That my Lord acquainted the Deponent where Mr. *Hill's* Lodging was: And the Deponent and his Watch went to search for him; and in the mean time, *Hill's* Boy came in, and they found Gunpowder and Ball about him. That when he found Mr. *Mountford's* Sword, it was not in the Scabbard, but broke in pieces: And he had brought it into Court, together with my Lord *Mohun's* and Mr. *Hill's* Swords.

Lord *Mohun*. Where did you find the piece of broken Sword?

Davenport. I found it in the Highway over against the Door where you stood. My Lord was upon the pav'd Stones, when I came to take him.

Mr. *Bancroft*, the Surgeon, was call'd.

He depos'd, That he was sent for to Mr. *Mountford*, when he was wounded; and he found the Sword went in and out by his Back Bone behind his

The two Surgeons Evidence.

his Left Side; and that he told him it was Mortal. And that the Deponent said to Mr. Mountford, Now you are upon the brink of Eternity, Pray tell me who gave you this Wound? Whereupon Mountford answer'd, *My Lord Mohun offer'd me no Violence; but while I was talking with him, Hill struck me with his Left Hand, and with his Right Hand run me through, before I could put my Hand to my Sword.* And the Deponent added, that Mr. Mountford died about One the next Day.

Mr. William Hunt, the other Surgeon, Sworn.

Page 971.

Att. Gen. Pray give an Account, what you know of this Business?

Hunt. When I was sent for to Mr. Mountford, I ask'd him the manner of his being hurt? and he said, *My Lord Mohun spoke to me, but Hill run me through, before my Sword was drawn.* I ask'd him if he had Time to draw? and he said, *Hill was in me, and was through me, before my Sword was out.*

Then my Lord Mohun's Witnesses were call'd, and first, Mr. Brereton.

Lord Mohun's
Witnesses,

Lord Mohun. I call him to shew I had no Malice to Mr. Mountford.

Mr. Brereton depos'd, That some few Days before Mr. Mountford was kill'd, he (the Deponent) was in my Lord Mohun's Company, and heard him commend Mountford's Acting, and say abundance of kind Things of him: And desired the Deponent to fix upon some time, that they might drink a Bottle with him. And that afterwards, my Lord Mohun being at the Deponent's Lodgings, told him, that Mountford had been very Civil to his Lordship, the Night before, at the Play House.

Thomas Lake, Mr. Hill's Boy, was call'd.

He depos'd, That he understood that his Master and my Lord Mohun had a Design to take away Mrs. Bracegirdle, and they had provided Nightcloaths for her, and a Coach to carry her to Totteridge. That they enquired for her at her Lodgings, and were told, she was at Mr. Page's at Supper. That her Brother came to them to the Horse-shoe Tavern, and agreed to tell them when she came out, and which way she went home: And that as she came down Drury Lane, they endeavoured to force her into the Coach; as the other Witnesses had depos'd.

Page 972.

The Evidence
of Hill's Boy.

Lord Mohun. Let him tell what happen'd in *Howard street*, before *Mountford* was wounded?

Boy. I saw Mr. *Mountford* come down *Norfolk-street*, and turn into *Howard-street* (which was not his way Home) and there he met my Lord *Mohun* and my Master; and there pass'd some Complements between my Lord *Mohun* and Mr. *Mountford*. After which, his Lordship said, He hop'd he was not come to vindicate any Thing of Mrs. *Bracegirdle*: *Mountford* said, No; but he was sorry his Lordship should vindicate Mr. *Hill* in such Rudeness. And Capt. *Hill* hearing it, came up, and told Mr. *Mountford*, If he had any Thing to say to him, he could vindicate himself; and bid him draw. After which, my Master went into the middle of the Street; and Mr. *Mountford* drew, and met him, and made three or four Passes, in which his Sword broke. My Lord *Mohun* stood upon the flat Stones while they Fought, and did not meddle. When Mr. *Mountford* came first to them, he had his Sword in his Hand, in the Scabbard.

Lord Mohun. I desire he may be ask'd, If Mr. *Hill* did not stay in the Street, to beg Mrs. *Bracegirdle's* Pardon?

Boy. Mr. *Hill* said, he would but stay and beg Mrs. *Bracegirdle's* Pardon, for what he had done, and he would go home.

Lord Mohun. Did I offer to make my escape?

Boy. He might have run away as well as my Master, but he staid, and gave himself up to the Watch.

Att. Gen. Have you not been examin'd before upon Oath?

Boy. Yes, I was examin'd first at *Hick's Hall*, and again before the Coroner: And gave the same Evidence, as near as I can remember, as I do now.

Att. Gen. Was not your Deposition before the Coroner read to you? And did not you subscribe it?

Boy. I subscrib'd it, but it was not read to me.

Att. Gen. Did not you swear at that time, that when Mr. *Hill* and *Mountford* were pushing, my Lord *Mohun* said, he would stand by his Friend, and *Hill* was his Friend?

Boy. My Lord said he would not go, he would stay by his Friend; for Mr. *Hill* was his Friend.

Earl

Earl of *Carlisle*. Was he the Boy that said, Pray my Lord, Good my Lord, do not do it, &c.

Boy. No, I said no such Thing, nor heard any such Thing.

Eliz. Walker, Mrs. *Bracegirdle*'s Maid, Sworn.

She depos'd, That her Mistress sent her over to Mrs. *Mountford*'s, to desire her to send her Husband Word, that he should not come home without a good Guard: For my Lord *Mohun* and Mr. *Hill* were walking about the Street, and *Hill* with his naked Sword. That the Deponent went with Mrs. *Mountford*'s Maid, to look for Mr. *Mountford*, but they could not find him. That when she return'd, my Lord *Mohun* and Mr. *Hill*, were before her Mistress's Door, and staid there an Hour. That Mrs. *Brown* seeing Mr. *Mountford* coming, went to him, and desired him not to come down that Street, but go to his own House, because of my Lord and Capt. *Hill*: But he press'd forward, and when he met my Lord, there pass'd several Complements and endearing Speeches between them. After which, Mr. *Mountford* told my Lord, it was a Dishonour to him, to keep Company with Mr. *Hill*. And that while the Deponent turn'd about, to look to the Door, she heard Mrs. *Brown* say, *Hill* and *Mountford* were going to Fight. And that the Deponent saw them make two or three Passes at one another; after which, *Mountford* said he was kill'd, and threw down his Sword; and she took it up, and there was a good piece of the Sword broken off. That Mr. *Hill* run away, and Mr. *Mountford* went to his own House; but my Lord *Mohun* staid in the same Place, where he and Mr. *Mountford* embraced one another: And that the Fight was in the middle of the Street. That when the Watch came, my Lord *Mohun* went towards them, and surrendered himself.

Lord *Mohun*. I desire to ask her, If she did not swear to the same purpose, at *Hicks's Hall*?

E. Walker. I gave in much the same Evidence at *Hicks's Hall*, I have given here; but I cannot say in every particular: For my Mistress stood before me, and I might not say all I could then, for fear

'Tis unwarrantable for Justices of Peace to examine the King's Evidence after the Coroner.

fear of my Mistress, and others that threatned me; for they did not like my Evidence.

Att. Gen. I must observe here, that it is a very unwarrantable Thing, for Justices of Peace to take upon them, under pretence of considering, in order to bail a Person charg'd with Murder, to examine every one of the King's Witnesses. Both the Grand Jury, and Coroner, are oblig'd by their Oaths, to keep the King's Evidence secret. But this indirect way, of taking Examinations by a Justice of Peace, in order to bailing an Offender, is the way to make it publick. And I can't but take Notice, that this Witness went away from her Mistress, and concealed herself, and was not to be found, when she should have been examined by the Coroner, who is the proper Officer. I desire some Account may be given, in whose Hands she has been all this Time?

Page 976.

Lord — I think the Prisoner, or his Witnesses, ought not to be interrupted: But if Mr. *Attorney* have any Remarks to make, he should do it when they have done.

Mrs. Ann Jones was call'd.

She depos'd, That she saw Mrs. *Bracegirdle* and her Mother, and Mr. *Page*, come home; and my Lord *Mohun* and Capt. *Hill* came to the Door with them, but did not go in: And that they continued an Hour about the Door of Mrs. *Bracegirdle's* Lodgings. And that *Mountford* coming into the Street, my Lord *Mohun* met him, and embraced him; and such Expressions of Kindness passed between them, as the other Witnesses deposed. That Mr. *Mountford* saying, He hop'd his Lordship would not vindicate Mr. *Hill*, Capt. *Hill* came up, and hit Mr. *Mountford* a box on the Ear, and bid him draw. Whereupon *Mountford* said, Damme, What is that for? and drew. And they both went off the pav'd Stones, into the middle of the Highway: And at the second Pass, Mr. *Mountford's* Sword was broke, and he flung it down, and run away; and said, he was a dead Man! Mr. *Mountford* went one Way, and *Hill* another. That my Lord *Mohun* stood still upon the pav'd Stones, while they were Fighting, and she did not see him meddle; nor did she observe his

his Sword was drawn: And she saw him surrender himself.

Att. Gen. I desire to know, If the Scuffle did not begin upon the Pavement? and, If she did not see some Blood there the next Day?

Jones. It began upon the Pavement; but I saw no Blood.

Edward Warrington was call'd.

Page 877;

He depos'd, That he liv'd at the *Swan*, over-against Mrs. *Bracegirdle's* Lodgings; and about Ten at Night hearing a Disturbance he look'd out, and saw Two Gentlemen talking to old Mrs. *Bracegirdle*. That she and some other people went into the House, but the Two Gentlemen walk'd about the Street for an Hour and half, one of them having his Sword drawn. That he saw Mr. *Mountford* come down *Norfolk-street* and turn into *Howard-street*, with his Sword in his Hand in the Scabbard: That Mr. *Mountford* came out of the Way to his own House when he turn'd into *Howard-street*; for his House was lower down in *Norfolk-street*. That my Lord *Mohun* met Mr. *Mountford* and embrac'd him and complimented him. That he saw *Hill* and *Mountford* with their Swords drawn upon the pav'd Stones; but some Women being about them he could not well discern when they drew, or who begun the Quarrel. That he saw *Hill* and *Mountford* come off the flat Stones with their Swords drawn, not a Sword's Length asunder; and they passed at each other: That the Deponent run for a Paring-Shovel to part them, but before he return'd they were gone; and only my Lord *Mohun* left.

Lord High Steward. Can you say whether *Mountford's* Sword was drawn before he was hurt?

Warrington. I can't be positive whether it was or no, there being Women about them.

Anne Knevit was call'd.

Page 978.

She depos'd, That she was Servant at a Coffee-House over against Mrs. *Bracegirdle's*, and that about Ten that Night the Murder was committed, she saw Two Gentlemen come home with Mrs. *Bracegirdle* and her Daughter; and Mrs. *Bracegirdle* having put her Daughter into the House came out again to the Gentlemen, and ask'd them what

what their Business was; and they said they wanted to beg her Daughter's Pardon for what they had done; and she answer'd, she believed they came to rob her Daughter, and if they had come upon an honourable Design they would have come at a more seasonable Time: And then the old Gentlewoman went in; but they continued before the Door, and knock'd several Times, and said they would stay in the Street all Night, unless they might see her Daughter and beg her Pardon: But if she would give them Leave to speak with her, they would go to their Lodgings immediately. And being deny'd, they sent for a Bottle of Wine and drunk her Health: That the Watch coming down and demanding who was there, one of the Gentlemen answered he was a Peer, and his Name was *Mohun*; and the other said his Name was *Hill*, and the Watch passed by: And the Deponent going to warm a Bed, soon after heard a Bustle in the Street, and looking out of the Window she saw a Sword in a Man's Body; and the Man who drew out the Sword run away, and the Man who was run through went another Way; and the Watch return'd, and one call'd out to seize my Lord *Mohun*, who was standing between Mrs. *Bracegirdle's* Door and the next; and my Lord said there was no Occasion to lay Hands on him, for he would not stir from them.

Page 979.

Att. Gen. You say my Lord *Mohun* was told several Times Mrs. *Bracegirdle* should not be spoke with: Pray who brought those Messages to them?

Knevit. It was old Mrs. *Bracegirdle*.

Then Mr. *Attorney* desired the Boy might be call'd again, and hear his Deposition read which he made before the Coroner; which was read accordingly, and was to this Effect.

The Information of Thomas Leak, Servant to R. Hill, taken 12th of December, 1692.

" He saith, It was agreed on *Friday* last, between his Master and the Lord *Mohun*, to carry off Mr. *Bracegirdle*; and that they did endeavour to seize her accordingly: But being disappointed they went home with her, and walked under her Window; about an Hour and a half afterwards, when Mr. *Mountford* came in-

A Deposition of a Witness before the Coroner read against the Prisoner, tho' the Witness was examined in Court *Vi-va voce*.

" to

“ to the Street, and after some Salutations, my
 “ Lord said he hop’d he was not come to vindicate
 “ Mrs. *Bracegirdle*; and *Mountford* answered, he
 “ hop’d his Lordship would not vindicate *Hill’s*
 “ Rudeness: Then *Hill* said, he was able to vin-
 “ dicate himself, and bid *Mountford* draw, and
 “ they push’d at each other; and my Lord said he
 “ wou’d stand by his Friend, and Mr. *Hill* was
 “ his Friend: And that his Lordship did endea-
 “ vour to part them.

J. Cowper, Coroner.

*This Deposition the Boy depos’d in Court
 again, that it was true.*

Att. Gen. I desire Mrs. *Bracegirdle* may be
 ask’d what became of her Maid, who was Evi-
 dence for my Lord?

Page 980.

Mrs. Bracegirdle. She went away from me on
 the *Sunday*, and I sent to her Aunts the Week af-
 ter to seek for her, and she could not be found;
 nor could I hear of her from that Time to this.

Lord Mohun. Was she not discharg’d, and her
 Wages pay’d her?

Mrs. Bracegirdle. I desir’d her to stay but she
 would not; and demanding her Wages, they were
 paid her.

Lord Mohun. I desire the Maid may be ask’d
 why she went away.

Maid. When I came from *Hicks’s-Hall*, I
 heard they design’d to rattle me off; and Mrs.
Mountford sending for me, I was afraid because
 they were all Players, who have a worse Reputa-
 tion than other people; and I went away: And
 finding I had taken one of my Mistresses Aprons
 by Mistake, I desired my Uncle, who was a Por-
 ter, to carry it her, and he told me there had been
 Three Bailiffs to enquire after me; and knowing
 their Inveteracy against me, and fearing to be laid
 in a Prison, I kept out of the Way ever since.

Then the Lord High Steward demanding of my
 Lord *Mohun* if he had any thing more to say;
 his Lordship answered, he thought he had made his
 Innocence sufficiently appear, and committed him-
 self to that honourable House; where he knew he
 should have all the Justice in the World: After
 which Mr. *Sollicitor* sum’d up the Evidence for
 the King.

Page 981.

Then

Page 982.

Then the Lords adjourned to their House, and after some Debates there, adjourn'd 'till the next Day.

The Lords debate the Points of Law in their House above.

Page 983.

Wednesday, 1 Febr. The Lords continued to debate the matter among themselves, in their House above.

They come down into the Hall.

1. Question proposed to the Judges.

On *Friday*, about Four in the Afternoon (the Debates continuing 'till then) the Lords came from their House above, to the Court in *Westminster-Hall*, where the Judges had waited for them a great part of the Day; And my Lord *Mohun* being set to the Bar, the Lord High Steward acquainted him, that some Questions having arisen upon the Evidence in Point of Law, he was therefore, by their Lordships Command, to propose a Case they had stated to the Judges, for their Opinions, *viz.* In a Case where a Man shall murder another, Whether all those that are in his Company at the Time of the Murder, are so necessarily involved in the said Crime; that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty of *Man-Slaughter*.

The Judges desired they might have the Case in Writing, and that they might withdraw and consider of it among themselves; but the Lords would not permit them to withdraw. Then the Prisoner desired he might have a Copy of the Case, and his Council might be heard to it before the Judges delivered their Opinions; which was granted. And Sir *Thomas Powis*, Mr. *Hawles*, and Mr. *Price*, who had been assign'd his Council in matters of the Law, stood by him at the Bar.

Page 984.

The Prisoner's Council permitted to argue the Case before the Judges gave their Opinions.

Sir *Thomas Powis* in his Argument admitted, that if Two or more meet with *Malice prepense* to kill another, and one of them only giveth the mortal Wound; yet they are all equally guilty: Also where several Persons meet to commit an unlawful Act (as to rob a Pack) and in the Execution of that unlawful Act one of them kills another Man, the others will be involv'd in the Guilt: But he held, That if after such unlawful Act is totally over or laid aside, one of the Company seeing a Person coming against whom he bears Malice, and goes up to him, and kills him, this will be Murder in him; but neither Murder or Man-slaughter

slaughter in the rest, provided they did not Abet or Assist him.

Also where *A*, sees his Friend fighting with *B*, (who have Malice to each other) and *A* comes in suddenly to the Assistance of his Friend, and *B* is kill'd; this is but Manslaughter in *A*, though it is Murder in his Friend. And further, That if one come by chance, where two are Fighting, and one of them is kill'd; this is neither Murder or Manslaughter in him, who came there by chance, if he did not Aid or Abet either of them. Nay, if one be in Company with two Persons, whom he knows have Malice to each other, and they Fight, and one of them is kill'd: He that stood by (tho' he was conscious of their Malice to each other) is neither Guilty of Murder or Manslaughter. That to make a Man Guilty of Murder, it must appear that he did either Aid or Abet the Murderer; or, that he, before, agreed or confederated with him to do it, and was there for that purpose.

Mr. *Hawles* and Mr. *Price* spoke to the same Effect, And Mr. *Price* added, That if *A* commands *B* to kill *C*, and afterwards *A* countermands it, and yet *B* kills *C*, *B* is guilty of Murder; but *A* who countermanded it is not guilty as accessory, for to make Murder there must be a continuing Malice 'till the mortal Wound given.

The Lord High Steward demanded, if the Council for the King would reply to what the Prisoner's Council had offered: Mr. *Attorney* answered, that when their Lordships would let them know what it was their Lordships took to be the Fact of the Case before them, they should be ready to speak to the Law upon that Case; but 'till the Fact were stated by their Lordships, and declared to be my Lord *Mohun's* Case; they thought it not consistent with their Duty to enter into a Debate upon Supposals.

Then the Judges were acquainted that their Lordships expected their Opinions: Whereupon my Lord Chief Justice *Holt* answer'd he was of Opinion, that the Crime of those who are in the Company at the Time of the Murder committed, may be so separated from the Crime of the Person that committeth the Murder; as in some Cases

What shall bring a Man within the Guilt of Murder.

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The King's Council refuse to argue the Case, unless their Lordships would say they took that to be my Lord *Mohun's* Case.

To the 1st Question the Judges answer that one may be present at a Murder, and yet be guilty only of Manslaughter

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they are only to be found guilty of Manslaughter; and with him the Lord Chief Justice *Treby*, and the rest of the Judges agreed: After which, the Earl of *Monmouth* proposed the following Case, viz.

2d Question.

A conscious of an Animosity between *B* and *C*; *A* accompanieth *B* where *C* happeneth to come, and *B* killeth him: Whether *A*, without any Malice to *C*, or any actual hand in his Death, be guilty of Murder?

The Case being handed to the Judges and the Prisoners Council, Sir *Thomas Powis* spoke to it; as did Mr. *Hawles* and Mr. *Price*; but offering nothing further than what is advanc'd in their former Argument, I shall refer the Reader to that.

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Answer to the 2d Question.

The King's Council refusing to reply, the Opinion of the Judges was demanded on the Second Question.

That a third Person, who knows of the Malice between the Parties, and is present accidentally, is not guilty of any Offence.

My Lord Chief Justice *Holt* answered, That he conceived *A* was not guilty of Murder; for it appeared the Meeting was casual, and there was no Design in *A* against *C*: And therefore, tho' *A* did know of the Malice between *B* and *C*; yet it was not unlawful for *A* to keep Company with *B*, but he might go with him any where, if it was not upon a Design against *C*: And therefore the Case was put, there was not any Offence in *A*.

With my Lord Chief Justice *Holt* the rest of the Judges agreed.

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Then the Lord *Scarborough* proposed another Case, viz.

3d Question.

Whether, If *A* heard *B* threaten to kill *C*, and some Days after *A* shall be with *B* upon some other Design, where *C* shall pass by, or come in the Place where *A* and *B* are; and *C* shall be kill'd by *B*; *A* standing by without contributing to the Fact, his Sword not then being drawn; or any Malice ever appear on *A*'s Part against *C*, Whether *A* will be guilty of the Murder of *C*?

Answer to the 3d. That one not consenting or contributing to the Murder, is not guilty tho' present.

The Prisoner's Council offering nothing more in their Argument on this Case, than what is to be found in the former, or in the Resolutions of the Judges, it is omitted here.

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The Opinion of the Judges being demanded to the Third Question, my Lord Chief Justice *Holt* answered,

answered, He was of Opinion, that *A* in this Case would not be guilty of Murder or Manslaughter; for it did not appear, by the stating of the Case, that *A* did consent to the Design, or in any wise contribute to the Fact. The rest of the Judges were of the same Opinion.

The Earl of *Kingston* proposed a Fourth Question, viz.

Whether a Person knowing of the Design of another, to lie in wait to assault a Third Man, who happeneth to be kill'd, (when the Person who knew of the Design is present) be guilty of the same Crime with the Party who had the Design, and kill'd him; tho' he had no actual hand in his Death? 4th Question.

The Lord *Mulgrave* conceiv'd it was not a proper Question, and mov'd the House to adjourn; and they adjourned to the House above: And being return'd, the Lord High Steward acquainted the Council both for the King and the Prisoner, that where a Question was put by any Lord, which they did not think fit to give an Answer to; the Lords would take it for granted either on the one Part or the other, that the Reason was because it was not necessary to give any Answer; and then their Lordships would proceed to have the Answer of the Judges.

Then the Fourth Question was proposed again by the Earl of *Kingston*.

The Prisoner's Council having spoken to it, my Lord Chief Justice *Holt* delivered this Opinion, That it was no Murder or Manslaughter: He that knew of the Design of assaulting, only happened to be present when the assault was made and the Party kill'd; and if he did not contribute to his Death, he was not guilty of Murder: But if he that knew of the Design had advis'd it or agreed to it, or lay in wait for it; or resolv'd to meet the Third Person that was kill'd, with him that kill'd him, it would have been Murder.

The Earl of *Nottingham* proposed a 5th Question, viz.

Whether a Person knowing of the Design of another to lie in wait to assault a Third Person, and accompanying him in that Design, if it shall happen that

Answer to the 4th Question.

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That one knowing his Friend's Design to lie in wait is not guilty, if he did not consent to it.

5th Question.

the Third Person be kill'd at that Time, in the Presence of him who knew of that Design, and accompanied the other in it, be guilty in Law of the same Crime with the Party who had that Design and kill'd him; tho' he had no actual hand in his Death?

The Prisoner's Council insisted, That although a Person knows of a Man's Design of assaulting another, and goes along with him to the Place where he executes his Design, and the Man, intended to be assaulted, is kill'd; yet, if he who accompanied the Murderer did nothing to promote or encourage the Assault, he could neither be made Principal or Accessory to the Murder.

Page 994.
Answer to the
5th Question.
That one
knowing his
Friend's De-
sign, and ac-
companying
him in it is
guilty, if the
Person be
kill'd.

The Judges Opinion on the Fifth Question being demanded, the Lord Chief Justice Holt answered, That by the Words *had no actual hand*, he supposed was meant that he gave no Stroke, or held the Person while the other kill'd him, or used any Violence: And he was of Opinion, That this was Murder in the Person that did accompany the other in the Design; for he being acquainted with the Design, and knowing the Intention of the Party to commit Murder, or do an unlawful Act, upon which Death might ensue; accompanying him in that Design he shews an Approbation of it, and gives him greater Courage to put it in Execution: Which is an Aiding, Abetting, Assisting, and Comforting; which are the Words used in such Indictments.

Mr. Justice Gregory said, he understood it that the Party accompanied the Murderer not only to the Place, but in the Design; and without whose Presence, perhaps the other would not have ventured upon it; and therefore he was of Opinion it was Murder.

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Mr. Baron Powel was of Opinion, That it was Murder. For where a Person is privy to a felonious Design, or to a Design of committing any personal Violence; and goeth along with the Party, and accompanieth him in putting the Design in Execution, though he may think it will not extend so far as Death, but only beating, and hath no personal hand, or doth otherwise contribute but by his being with the other Person when he executeth his

his Design of Assaulting ; and the Party beaten, dieth, they are both Guilty of Murder. *The rest of the Judges were of the same Opinion.*

Lord Mohun. Will your Lordships give my Council leave to answer some Things the Judges have said ?

L. H. S. You must not reply after the Judges have given their Opinions.

The Lord Cornwallis propos'd a 6th Question, viz.

If a Person be by, named William, when Thomas said he would stab John ; upon which William said, he would stand by his Friend : And afterwards Thomas doth actually murder John, and William is present at the same Murder, Whether the Law will make William equally Guilty with Thomas ? or, What Crime William is Guilty of ?

The Prisoner's Council admitted, That as this Case was put, it would be Murder in *William* ; but they held, That if the Resolution were Conditional, it would be otherwise. As where a Man says, I will stab such a one, if he oppose me in such a Design ; and a Person present, says, he will stand by him if he is oppos'd, in that particular Matter : And he is not oppos'd in that particular Thing, upon which he said he would stab him ; but he stabs the threatned Person, on some other Occasion, when the Party, who said he would stand by him in the first Matter, is present : This will not make the Person, who promis'd to stand by the Murderer on another Account, guilty of Murder. For that the Law was favourable to a Man, in Case of Life ; and his Words shall not be carried to his prejudice, further than his Intention ; or, farther than the concomitant Circumstances plainly import.

The Judges Opinion being demanded, they answered, This was rather a Case of Fact, than Law. For if *William* was designedly present with the other that committed the Murder, then it would be Murder in *William* : And if there were no Evidence, to prove upon what Account he was present, it might be presum'd he was present in pursuance of his former Agreement. But if it appeared, that he did not meet in pursuance of that

The Prisoner's Council not suffer'd to reply, after the Judges had given their Opinions.

6th. Question.

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Answer to the 6th Question.
That one having promised to stand by his Friend, to assault another, and is designedly present when he is kill'd, is guilty of Murder.

Agreement, then it might not be Murder. That this was all matter of Evidence, and rested upon the Conscience of those that were to try the Prisoner.

Page 997.
7th Question.

The Earl of *Mulgrave* propos'd a 7th Question, viz. *If A accompanieth B in an unlawful Action, in which C is not concerned, and C happeneth to come in the way of B, after the first Action is fully over, and happeneth to be killed by B, without the Assistance of A, Whether A is Guilty of that Man's Murder?*

Answer, No Murder, where one happens to be kill'd, after the unlawful Action resolv'd on, is over.

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The Judges agreed, that as this Case was stated, *A* was not Guilty of Murder.

Then the Lords went to their House above, and immediately adjourned till the next Morning.

Saturday 4 Febr. The Lords came down from their House, about Four in the Afternoon, to the Court in the Hall: And the Lord High Steward beginning with the youngest Baron (my Lord *Lemster*) Demanded, *Whether my Lord Mohun were Guilty of the Murder of William Mountford, whereof he stood Indicted, or Not Guilty?* And the Lord *Lemster* stood up in his Place, uncovered, and laying his Right Hand on his Breast, said, *Not Guilty upon my Honour.*

Page 999.
My Lord *Mohun* is acquitted.

After the same Question had been propounded to the other Lords respectively, in their Order, the Lord High Steward declar'd, that Fourteen of their Lordships had found my Lord *Mohun* Guilty, and Sixty Nine had found him *Not Guilty*. After which, the Prisoner was call'd; and being brought to the Bar, the Lord High Steward acquainted him, that their Lordships Judgment was, That his Lordship was *Not Guilty*. And therefore he was discharged.

The Court breaks up.

Then the Lord High Steward standing up, broke his White Staff, whereby his Commission was dissolv'd: And the Lords return'd, in order, to their House above.

The End of the Third VOLUME, in the Tryals at Large.



STATE TRYALS.

Vol. IV. Part I.

VOL. IV. PART I.

Vol. IV. Part I.

The Tryal of ROBERT CHAR-
NOCK, EDWARD KING,
and THOMAS KEYS, *the*
11th of March, 8 W. III.
1695.

Vol. IV.

Page 1.

Clerk of the Arraignment. Robert Charnock, &c.
Hold up thy Hand, [*which the Prisoners respec-*
tively did.] You stand Indicted, &c.



THE Indictment charges the three
Prisoners at the Bar, with a
Traiterous Conspiracy and De-
sign to subvert the Government
of this Kingdom, and to murder
the King, and to bring the Sub-
jects of this Kingdom into Sla-
very and Subjection to the French

The Indict-
ment for
High Trea-
son, in com-
passing and
imagining
the Death of
the King, by
Assassination,
&c.

King. And to this end it sets forth, " That up-
" on the 10th of *February* last, and divers other
" Times, as well before, as after, at the Parish of
Vol. IV, Part I. P 3 " St.

“ *St. Clements Danes*, in the County of *Middle-*
 “ *sex*; the Prisoners, with divers other Traytors,
 “ unknown, did consult and agree, to Assassinate
 “ the Person of the King, as he was riding in his
 “ Coach. And did likewise agree, that Forty Horse-
 “ men, of whom they themselves were to be part,
 “ should lie in Ambush, and set upon the King, so
 “ being in his Coach, and upon the Guards that
 “ were to attend him. And it likewise charges
 “ them with buying Horses and Arms, for the
 “ execution of this Design.

Page 2.

Clerk of the Arraignment. How say you, *Robert Charnock*, Are you Guilty of the High Treason, whereof you stand Indicted, or Not Guilty?

Charnock de-
 fires a Copy
 of the Indict-
 ment, and
 Council, ac-
 cording to the
 late Act.

Charnock. My Lord, I desire I may have a Copy of this Indictment, and Council to direct me how to manage my self according to the New Act of Parliament, made this Sessions, for regulating Try-als in Cases of High Treason.

L. C. J. Holt. Have you not had Council to advise you already? Did they tell you, you were to have a Copy of your Indictment, by Virtue of that Act?

Charnock. Though the Act does not take place till the 25th of this Month, yet the Equity of that Act, being now reduced into a Law, is conceiv'd to reach to Cases of the like Nature, before the 25th; and I desire the Act may be read?

L. C. J. You shall have it read if you will, but you are to be proceeded against, according to the Law before. And before this new Act, no Copy of an Indictment should be granted, nor Council assign'd, or permitted to assist the Prisoner in making his Defence. True it is, a Copy of the Indictment has been often desired; but as true, that it has as often been deny'd.

He insists on
 the Equity of
 the Thing.

Charnock. My Lord, The Ground of that Act, which is the Reasonableness and Equity, that all Prisoners should be made capable of fairly defending themselves, is now in force; and I hope the Court will look upon it to be reasonable, that I should have the Benefit of that Equity.

L. C. J. We are not here in a Court of Equity, but must proceed according to the Rules of Law; and

and the Law you speak of, does not yet commence.

Charnock. I am inform'd, there is nothing in this Act, but what was Law before the making of the Act, though the Practice may have been otherwise.

L. C. J. Then you have been much misinform'd, for then there could have been no occasion for making of the Act.

Charnock. I do not say that all Things in this Act, were Law before; but there are several Things, and particularly these two which I now desire, A Copy of the Indictment, and Council to assist me; which were agreeable to Law before. And I desire my Lord Chief Justice *Treby* to declare, Whether, in a Conference between the Lords and Commons, he did not deliver his Opinion, That it was the Common Law, that a Prisoner should have a Copy of his Indictment, and Council to assist him.

L. C. J. Treby. I do not think, I ever said that it was Common Law.

Charnock. My Lord, I beg your pardon, I was inform'd your Lordship had delivered such an Opinion. But whether I am not entitled to the Benefit of this Act, it having pass'd both Houses of Parliament, and had the Royal Assent, though it be to take its Commencement on the 25th of this Month? For that which is the Law of all Laws, the Reason and Equity of it, is, and always will be the same.

L. C. J. No, That does not follow, that because the Wisdom of the Law-Makers has thought it equitable *de futuro*, therefore it should be Law now: But the Time of the Court is not to be taken up in this manner. Are you *Guilty* or not *Guilty*?

Charnock. It is impossible for me to go to Tryal presently, and without the Assistance of my Council.

L. C. J. Had you not Notice of your Tryal, and Council with you, since that?

Charnock. I confess I had Notice of my Tryal on *Wednesday* last, but my Council did not come to me till *Saturday* last.

L. C. J. This Day Se'night is a very convenient Notice.

Sir Tho. Trevor.

Page 4.

The Prisoners had an Order for their Council and Friends to come to them in Prison.

Att. Gen. My Lord, they had the Liberty of naming their own Council; and as soon as their Names were brought to me, they had the Liberty to go to the Prison to them. And they had a further Order, that their Friends might come to them, but not in private; but that the Council should speak with them in private, and not in the presence of the Jaylor.

Charnock. But there was no Order for my Solicitor to be with me in the absence of the Jaylor, who is the only proper Person to be consulted with.

Clerk of the Arraignment. Robert Charnock, Are you Guilty, &c.

Charnock. My Lord, I hope you will give me more Time to get my Witnesses; several of them are ten Miles out of Town.

L. C. J. Is that such a distance, you could not have your Witnesses between this Day Se'night and this Day? Besides, what you urge, is out of Time: You speak too soon to put off the Tryal, for there can be no Tryal till Issue join'd, and that cannot be till Plea pleaded.

Charnock. My Lord, I was never instructed in Querks of Law; I hope you will take care I am not hurt for want of knowledge in the Forms of Law.

Clerk of the Arraignment. Robert Charnock, Are you Guilty or Not Guilty?

Charnock. Not Guilty.

Edward King pleaded Not Guilty also.

Clerk of the Arraignment. Thomas Keys, Are you Guilty, &c.

Keys. My Lord, I have had no Council; I was Servant to Captain Porter, and not able to fee Council.

L. C. J. But you can tell whether you are Guilty or not.

Keys. Not Guilty.

Charnock. My Lord, I desire I may have Pen, Ink, and Paper?

L. C. J. You shall have it, and the Indictment read in Latin, if you will.

Charnock.

Prisoners
plead Not
Guilty.

Pen and Ink
allow'd.

Charnock. My Lord, I do really desire it, if it be a proper Time.

[*Clerk of the Arraignment reads.*] *Juratores pro Dn'o Rege, &c.* till he comes to the Words *Interficere & Murdrare.*

The Indictment read in Latin.

Charnock. What Word was that last, Sir?

Clerk of the Arraignment. *Murdrare.*

Page 5
Exception to the Word *Murdrare.*

Charnock. That is an odd Word, I can't understand what it means.

L. C. J. It is a Term of Art, the Signification of it is to Murder. Go on Mr. *Hardesty.*

Cl. of the Arr. *Ad stragem miserabilem, &c.* to the end of the Indictment.

Charnock. My Lord, I desire the Indictment may be read again?

The Indictment was read again in Latin.

Indictment read a second time. Prisoner told, if they will not join in their Challenges, they must be try'd separately.

L. C. J. You that are Prisoners, every one of you, has the Liberty to challenge Thirty Five of those return'd upon the Jury, without shewing any Cause. Now, If you will all join in the same Challenges, we can try you all together, as you are all together jointly in the Indictment; but if you will not join in the same Challenge, but every Man Challenge for himself, we must try you single.

Charnock. I hope the Court will give my Solicitor leave to be by me?

L. C. J. No, You must speak for your self. What say you as to your Challenges?

Solicitor deny'd to be by.

Charnock. I had not a Copy of the Jury till Yesterday; and I have been inform'd, that it is usual to have a Copy of the Pannel Ten Days before the Tryal.

L. C. J. You have the same Privilege that is ordinarily given to Persons in your Condition.

Att. Gen. There was Order given for a Copy of the Pannel to be delivered.

Page 6.

L. C. J. That was not of Right, but of Favour; and it is a Practice that has of late obtain'd: But for Ten Days, that never was in any Case; nor is it practicable. But you do not answer, Whether you will join in your Challenges or not?

Copy of the Pannel not of Right, but a Favour.

Charnock. If these Gentlemen agree to join in the Challenge, I am content.

They join in their Challenges.

King and Keys agree with Mr. *Charnock* to make the same Challenge.

Charnock.

Charnock. My Lord, I cannot but think it hard, that I have not either Council or Sollicitor. My Council that I had, are out of Town.

Att. Gen. My Lord, He had order, first for one Council, and then for another; and whoever he named, he had order for.

L. C. J. If you will choose none, but those you cannot have; 'tis your own Fault.

Then those of the Pannel that had appear'd, were call'd, and the Prisoners challeng'd Thirty Three.

After the Jury were sworn, Proclamation was made as usual, and the Jury were charg'd with the Prisoners.

Page 9.

Capt. Porter Sworn.

Prisoners desire one Witness may not hear what another deposes.

Charnock. My Lord, I desire, before any of the Witnesses give Evidence against me, the rest that are sworn and produc'd, may be kept out of Court, till they that are call'd, have severally given their Evidence; that one may not hear, what the other says?

Granted.

L. C. J. If there be any other of the Witnesses in Court, let them withdraw, till they be call'd for; and let there be somebody to look after them, and attend them. (*Which was done.*)

Charnock. My Lord, I desire also, That if there be any Thing proved to be spoken in Company, and talk'd of by way of common Discourse, or only in Jollity, that may not be interpreted as a settled Design or Practice?

L. C. J. You have Pen and Ink, and may make such Observations as you think fit.

Att. Gen. Will you give the Court and the Jury an Account of your Knowledge, about the first beginning of this Conspiracy, the last Year?

Charnock. I suppose any Question about what was done the last Year, is not to the purpose; for there is nothing mentioned in the Indictment, of the last Year.

Evidence may be given of Facts, before or after the Time laid in the Indictment.

L. C. J. It is in the Indictment, *Divers Days and Times, as well before as after*; and so the Indictment comprehends even what might be done the last Year, as well as this. Nor are the Witnesses, or the King's Council, tied up either to the particular Time or Place mentioned in the Indictment;

Indictment; so it be within the County, and before the Indictment prefer'd. All that is to be regarded, is, That no Evidence be given or admitted, of any other Species of Treason, than what is contained in the Indictment.

And of Facts done in any place within the County, but not of any other Species of Treason than that laid in the Indictment.

Page 10.
Porter's Evidence of the design'd Assassination.

Capt. Porter. If your Lordship pleases, I will give you an Account of what was done this Year; and if any Questions, afterwards, be thought fit by the King's Council, to be ask'd me, about what pass'd before, I will answer them very readily. In January, some Weeks before this Design was on Foot, Sir William Perkins came to the Place where Mr. Charnock and I lodg'd: He told me, there were some Friends come from France, and that something was a doing, that would be for the Service of the King. I told them, if any Thing of that Nature was a doing, I would readily engage in it. A little after, I fell sick of the Gout; but then Mr. Charnock did acquaint me, that Sir George Barclay, and those that came from France, had brought a Commission to raise and levy War upon the Person of King William; and ask'd me, How many I could bring to join them, if the King Landed? And told me, Sir George Barclay would come to him about it. Accordingly, He, and Holmes, came to the House where we lodg'd, in Norfolk street, and there they were in private with Mr. Charnock; and afterwards, because I was Lame, they came into my Room. They said, they were going to some Company, and they hoped to see me afterwards. After that, we had several Meetings, particularly at the Globe Tavern in Hatton Garden, the Nag's Head in St. James's Street, and the Sun Tavern in the Strand; and in all these Places, we did consult together, which was the best way, and where was the best Place, to Assassinate the King. Sir George Barclay told us, he had Money to buy Horses, but not much; he had as much as would furnish about Forty. Capt. Charnock said, He would bring six or seven Men, that should come out of the Country. Sir William Perkins said, He would lend five Horses, three to be mounted by Men of his own, the other two, by such as should be provided. I promis'd to bring seven Men, with Horses.

Horses: And Sir G. *Barcley* said, That *Lowick*, and others that came over with him from *France*, would make up the Number. All this was agreed to, and there were several Consultations in what Method it was to be done: Some proposed to set upon him as he came from *Richmond*, by the Road; Others, when he was on Horseback, at *Cue*. Sir G. *Barcley* was for having it done by Ambuscade, in the Park by *Richmond*; and therefore desired me to go with Mr. *Knightley*, and view the Ground thereabouts. The Day before we were to go, Capt. *King* came to me, and proffer'd to go with us. We went that Night, to the *Swan* at *Knightsbridge*; and there we lay, and went next Day to view the Ground. And upon the Account that we gave, Sir George *Barcley's* Mind was alter'd: And it was agreed to do it in the Lane, coming from *Brentford* to *Turnham Green*; and the particular manner was agreed on too. One *Rookwood* was to command one Party of Sir George *Barcley's* Men, to attack the Guards. He told us, He had bought Twenty Horses for this Expedition. They were to be divided into three Parties, and Sir George *Bercley* was to have Four out of each Party, to seize upon the King's Coach, and to shoot into it, and Kill the King, and all those that were with him. And this was to be done on the 15th of *February*, which was a *Saturday*; and the King usually went to *Richmond* on *Saturdays*. We had two orderly Men to lie at *Kensington* for Intelligence, when the King and the Guards went out: The one was *Chambers*, and the other *Durant*. *Durant* was to bring an Account when the Guards went out, and *Chambers*, when the King went out: And when we had Notice when the King was gone, we were to go by three or four in a Party, to prevent Suspicion; and we were to be dispers'd in the several Inns about *Brentford* and *Turnham Green*. Sir George *Bercley* was to be at the King of *Bohemia's* Head; and a Man was to give Notice to him, when the King Landed, and he was to give Notice to us; and so we were to form our selves into our several Bodies, to take our several Posts agreed upon. And when the Matter was over, he told me, We might go to
Town,

Town, and lie still; and that there would come a sufficient Number from abroad, to assist us. That Four or Five Thousand *French* were to divert in *Scotland*; and the King would be near the *French* Shore, with a sufficient Army. On *Friday* before the 22d, when it was to have been executed again, We met at the *Sun* Tavern in the *Strand*, and discoursed, near half an Hour, on the former Disappointment. Several were afraid the Design was discover'd; but I told them, if it had been so, we should have been taken up before then: Upon which, it was resolv'd to do it on the Morrow. Capt. *Charnock* said he could not stay, because he should want some Men, that were come up out of the Country, on purpose. I said, I was afraid my Horses were Sick. And Sir *William Perkins*, thereupon, undertook to furnish me: And told Mr. *Charnock* and me, he had sent to Mr. *Lewis*, that belongs to the Earl of *Feversham*, to procure some; having, as he said, promised so to do. I sent the next Morning, to have a Note for two, by Mr. *Cranburn*; and he sent me a Note back again, by *Cranburn*, that he had sent to Mr. *Lewis*, and Mr. *Lewis* said, he would help him to three Horses, with Saddles, Holsters, and Pistols: And desired the List of my Men, which I sent him; and he sent it me back again, with a List of his own. And then I shew'd it to Mr. *De la Rue*, and we were preparing all Things for the execution of this Design. And presently after, News came that the King did not go out that Day neither. Upon which, I said, I would go out of Town, and I ask'd Capt. *Pendergrafs* to go with me; and we sent Keys to bring Linnen to us: But he did not come till *Wednesday*, and on *Thursday* we were taken.

Att. Gen. Were any of the Prisoners at the Bar, present at the Consultations you mention?

Capt. *Porter*. There was Mr. *Charnock*, and Mr. *King*, at all of them; *Keys* was my Servant a Year and half. He was present at most of the Consultations, and hir'd Horses to be employ'd in the Business. He was present both Times, when News came of the Disappointment. And the second time, he

he said, he met the King's Guards that were come back, all in a foam. That he had spoke to one of my Lord *Oxford's* Regiment; and that something was mutter'd, upon which he fear'd a Discovery. *Keys* did agree to be one of those, that should be concern'd and act in this Business.

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Att. Gen. As to the List of Men, which you say you sent to *Charnock*, and he sent you back with a List of his Men: Can you tell whose Hand that List of his Men was in?

Capt. Porter. I know *Capt. Charnock's* Hand very well, and to the best of my Knowledge it was his own Hand; subscribed *R. C.*

Att. Gen. How came it, it was not put in Execution the 15th.

Capt. Porter. Because the King did not go out that Day, as we had Notice he intended. *Durant* wrote first Word that the Guards were gone before, upon which I went for my Men; and about Noon I received a Note from *Mr. Charnock*, that the King did not go out that Day: The Note was subscribed *R. Robinson*, a Name he used to go by sometimes. It was wrote with *Capt. Charnock's* Hand to the best of my Knowledge.

Charnock. My Lord, I conceive he is no legal Evidence, for he makes himself a Criminal by his own Confession: And it is equal in my Judgment as if he had confessed it on an Indictment.

An Accom-
plice may be
a Witness be-
fore, but not
after he is in-
dicted.

L. C. J. If it had been a Confession on an Indictment, it would have been a Conviction; which would have had quite another Operation: But it not being upon Indictment, it is no Conviction; and therefore he is a legal Witness, tho' he does acknowledge himself to be guilty of the Crime.

Char. He has forfeited his Life by his own Confession; and now he wou'd, by Swearing against me, take away my Life to save his own: And sure this will take away from the Credibility of his Testimony, though he may be a legal Witness he cannot be a good one; and I hope the Gentlemen of the Jury will consider of it.

So it is in
Cases of Felo-
ny.

L. C. J. Not only in Cases of High Treason, but of Robberies and Burglaries, and the like; the Parties concerned are, and always have been allowed

allowed to be good Witnesses against their Accomplices.

Char. My Lord, He does not only Swear to save his own Life, but for 1000*l.* Reward; and having lavish'd away his Fortune, to make up that Damage, he may be tempted to undertake this Way of Swearing.

L. C. J. Do not mistake: He is to have no Reward by the Proclamation, unless he had come in voluntarily and apprehended one of the others; The Reward is for the Apprehension, whether they be found *Guilty* or *Not Guilty*.

Char. But still my Lord, He cannot be a good Witness, for it looks as if he was a Man that was willing to have become an Evidence, because We whom he has accused, particularly my self, were permitted to be taken; and then in the mean while he seems to withdraw, only that he might be taken as a Colour. For my Part I know not, but that it may be a Contrivance of his own, to be colourably taken up, because he is so willingly an Evidence; as the Jury may perceive he is.

L. C. J. It is certainly a hard matter, if not impossible to discover Crimes of this Nature, if the Accomplices in those Crimes shall not be allowed to be good Witnesses against their fellow Conspirators.

Char. My Lord, I desire Capt. *Porter* may be ask'd Where it was, and when I brought Sir *George Barclay* and Mr. *Holmes* into his Company.

Capt. Porter. It was the Beginning of *February*, at my Chamber, in the House where Mr. *Charnock* lodged; and I was then Sick of the Gout.

King. Capt. *Porter*, Did I mention any thing, or was there any Discourse, when you and I and Mr. *Knightly*, as you say, went out to view the Ground about killing the King.

Capt. Porter. The Day before he went, we dined together, and it was at the *Nagg's-Head*; and he asked if I was to meet *Knightly*, and go and view the Ground, in order to settling the Design, which was then talk'd of and consulted about: And Capt. *King* desired to go with us, and we lay

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lay at *Knightsbridge*: And when we were about it, we discoursed several Times of the Nature of the Place; and Capt. *King* did not approve of the Place on this side the Water, but lik'd the Ambuscade better which was to have been on the other side the Water.

Att. Gen. Was there any Discourse about this or the like Matter the last Winter?

Capt. Porter. There were several Meetings and Consultations last Winter, between Captain *Charnock*, Sir *William Perkins* and my self about such a Thing; and we thought the quickest Way to bring in the King and restore him to his Crown, was by knocking King *William* on the Head. And there were several Meetings about the Ways of doing it, but I don't remember any of the Prisoners were at those Consultations but Capt. *Charnock*.

Att. Gen. Will you acquaint us with the Reason why it was not done then?

Capt. Porter. We wanted a Commission from *France*; which we thought was a necessary Authority for us to act by.

Att. Gen. Do you remember any Discourse about a particular Gun to employed in this Service?

Capt. Porter. I had a Musketoon that carried Six or Seven Bullets: I remember I told Captain *Pendergrafs*, if the Coach made any great haste to get away, he might easily hinder that by killing or laming one of the Horses with that Gun.

Att. Gen. Was *King*, the Prisoner, in the Room at that Discourse?

Capt. Porter. I cannot say he heard it, but he was present then.

Att. Gen. Was there not some Discourse about a Defect of the Numbers, that were appointed and expected to join in this Thing?

Capt. Porter. I wanted a Man, and that was *Kenrick*; who had his Arm in a String: And Mr. *De la Rue* brought one that I knew not, and some of the Company went to the *Blew Posts*, to tarry there 'till I came to them; and Capt. *King* was present when the News was brought us of the Disappointment.

Mr.

Mr. *De la Rue* was Sworn.

De la Rue. My Lord, This Conspiracy hath been carrying on for some Years; it originally came from Col. *Parker*, and that was Five or Six Years ago, at St. *Germain's*, when I was there: He propos'd it to me, and said he would propose it to my Lord *Melfort*, who was King *James's* Secretary in *France*. Two Years after he came over to *England*, (it was a little after the Business of *La Hogue*) some Time after I came into *England*, and suffered a tedious Confinement here. Last Year, in the Months of *January*, *February*, and *March*, 'till the King's going to *Flanders*, there were several Conferences and Consultations about this Matter between Sir *William Perkins*, Capt. *Porter* and others: Capt. *Charnock* carried me to Sir *William Perkins*, whom I had never seen before, to the *Mitre Tavern* in St. *James's* Market; and then I was ask'd if I would be concerned in easing us of the Yoke that then lay upon us; I ask'd which Way it was to be done. Then they ask'd me if I knew where Capt. *Stow* liv'd; and employ'd me to go to his Lodgings, and appointed me to meet them at the *Star-Tavern* in *White Fryars*. They were there before me; I met with the Captain and brought him thither, but That they thought not a fit Place to consult in; and therefore they went to *Bromfield's* Coffee-House, and there they did talk something of it, but they took one another aside and talk'd privately among themselves, which I took Notice of; and was told, it was because there was an old Gentleman in the Company whom they did not care to acquaint with the matter, because he was too old to have a Hand in it; and they would acquaint none with their Resolutions but those that were to be Actors in the Design. I was not often in their Company after that, but I heard from time to time, how matters went on; and I heard from Capt. *Porter* particularly that they had been at *Turnham-Green*, and lik'd the Place very well; and that the Design was to take the King, or else to hurry him away to *Rumney-Marsh* alive, and carry him into *France*. *Charnock* told me also, that

they had sent to King *James* for a Commission to execute this matter; and to authorize them to carry the King into *France* if they could take him; and if they could not, they agreed to excuse themselves, by pretending he was kill'd by a Random Shot. I understood the Commission was delayed a long time; and then they resolved to execute the Design without a Commission: And within a few Days before the King was to go to *Flanders* I was told all was ready; but then they wanted a Ship to carry him off. There met at the *Rose* Tavern as I remember Capt. *Porter* and Sir *William Perkins*; but I cannot tell whether Capt. *Charnock* was there or not: They told me the matter was concluded on; and as I remember, they told me Capt. *Charnock* (or *Robinson*, for he went by both Names) was to have a Recommendation to somebody at *Deal*, and there they were to hire a Vessel; and I was ask'd whether I would go with them: I told them I would. But the King went a little after for *Flanders*, and they had no Time to compleat the whole Affair; and so the Business was put off 'till the King's Return this last Winter.

Att. Gen. Well, What say you to any thing since?

De la Rue. This Year, in the Months of *November* and *December*, Mr. *King*, the Prisoner at the Bar, told me that there would a Major General come over from *France*; and that there was a Man of Quality about the Town that offered to disburse Two or Three Thousand Pounds, if King *James* would give Orders for it; and this was I suppose to buy Horses to be engag'd in this matter: About the latter End of *January*, or the Beginning of the Month of *February*, they told me there was a Major General come over from *France*, and a great many people besides; and there would be something speedily put in Execution, which would be for the King's Service. *King* told me there was the rarest Place for the Execution of the Design that was possible, within a Quarter of a Mile of the King's House at *Richmond*, in a Lane that leads to the House; and so narrow, that the Guards could go but very few abreast; and there

was

was to be an Ambuscade behind the Park Pales, and the other Side was the River: This was on Sunday the 9th of February. On Tuesday the 11th of February I saw Capt. Porter at the End of Norfolk-Street, he told me they would be all together at the Nagg's-Head about Seven or Eight a Clock, I went and expected to be admitted, and ask'd if Capt. Porter was there, but there were several other Persons with him; and there was a Coach at the Door which had brought Two Scotch Gentlemen, of which, I thought Sir George Barclay was one: Capt. King came out with me, and was talking with me at the Door; and Captain Charnock comes with another to the Door in a Coach, when he perceived me, he pull'd himself back into the Coach; but finding he could not avoid being seen he came out, and ask'd me if I would not go up Stairs into the Company: But, because I was not invited up at first I would not trouble them. I did not see Capt. King afterwards 'till Saturday about Twelve a Clock; I was then at Charnock's Lodgings: King told me the King did not go out that Day: He told me that Sir George Barclay had brought over Sixteen of the Guards, and Two Officers, and a Brigadier, and a Sub-Brigadier: That they did not stir abroad without Leave; and were subsisted at the Rate of 4 s a Day, as the Guards were here. He told me Mr. Charnock and Capt. Porter had several Conferences with them how to take off His Majesty, to murder and to assassinate him.

Char. This is not Evidence my Lord.

L. C. J. That is true, not to affect you, but only Mr. King.

De la Rue. Captain, King told me also what he and Durant had proposed about the Ambuscade was rejected, for it was said that Sir George Barclay was not sure of Horse enough to carry them off afterwards; wherefore they resolved to assassinate His Majesty in the Lane coming from Brentford to Turnham-Green; and Sir George Barclay was to command Eight Persons to assault the King and those that were in the Coach, and Mr. Charnock were to attack the Guards in the

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Rear; and one *Rookwood* with a Party that came from *France*, and *Capt. Porter* in Two Wings were to attack the Two Sides of the Guards. On the 18th I met *Mr. Charnock* near his Lodging in *Norfolk-street*, I ask'd him how the matter went; says he, I find people that were sanguine and hot, and forward, are now grown cold; I believe the King has Notice of it, for he has not been abroad a good while; and I hear upon *Friday Night* it was agreed in Council to take up several Persons: Said he, I believe they are quite off of the Thoughts of it; but you may depend upon the main Business, that will be speedily; which was the Land of King *James*. On *Thursday* I went to *Captain Porter's* Lodging, who was removed from *Norfolk-street* into *Maiden Lane*, to one *Mr. Brown's* a Surgeon's; I told him I had heard from *Mr. Charnock* that the Thing was quite off: He told me he heard nothing of it, but found all People that were concerned as resolute as ever. On *Saturday Morning* I went to *Capt. Porter's* Lodgings, and in comes *Mr. Kenrick*, and after him comes in *Mr. Keys*, and after him *Mr. King* and *Mr. Pendergrafs*; *Cranborn* was ask'd when he saw *Sir George Barclay*, he said he just came from him; then *Capt. Porter* took a Pen and Ink and wrote down a List of the Persons he was sure of, and sent *Cranborn* with it to *Capt. Charnock's* Lodgings; in the mean Time *Capt. Porter* told me that *Mr. Pendergrafs* was to be one of the Eight under *Sir G. Barclay*, that were to assassinate the King, and I am going to lend him a Gun that will carry Six or Eight Bullets; says *Capt. King* thereupon, I hope you will not fear breaking the Glass Windows; by and by came News that *Chambers* had sent Word the King was to go abroad, and the Guards were gone, at which all the Company seemed joyful: *Cranborn* brought back the List that *Capt. Porter* sent to *Capt. Charnock*, and there were added to it several Names of the Men that were to be under *Capt. Charnock*, and that it was his Hand; and at the Bottom there was the Letters *R. C.* We agreed to go to the *Blew Posts* in *Spring-Garden*, I found *Mr. Pendergrafs* there, and

and I took Mr. *Keys* thither: By and by Word was brought that *Chambers* had sent Word the King would not go abroad that Day, upon which they all look'd very blank; *Keys* went in and out several Times, and at last he told us the Guards were returned from *Richmond* foaming; and the King's Coach was return'd to the *Mews* Gate: Capt. *Porter* ask'd *Pendergrafs* to go out of Town with him, and sent *Keys* to give the rest of the Company an Account that there was no Occasion for them, and so they dispersed. *Keys* was to give an Account where Capt. *Porter* was in the Country, that if Occasion was, he might be sent for: But I remember before the Company parted, there were several disloyal Healths drunk, as the restoring the late King, the Health of the Prince of *Wales*, the late Queen and the *French* King; and Mr. *Porter* took an Orange in his Hand, and squeezing it, gave it to the next whom he drunk to, and began a Health to the squeezing the Rotten Orange; and said, though we are disappointed one Day, I hope to have another. And *Keys* was at Dinner with them all the time, and every body drank it; but Mr. *Charnock* and Mr. *King* were not there.

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Charnock. You say there was a Note of Names sent by me to Capt. *Porter*; Do you know my Hand-Writing?

De la Rue. You have sent me several Notes, and owned the Messages came from you, and I do believe it was your Hand-Writing, because it was like the rest; and Capt. *Porter* told me it was your Hand-Writing. After the Company was broke up, I went to Capt. *Charnock's*, where was one *Douglas*, *Trevor*, Four Troopers of my Lord *Oxford's* Regiment, and a Trumpeter, and they were drinking the same Healths we drank.

Att. Gen. Give us an Account when you first made a Discovery of this Conspiracy.

De la Rue. On *Monday* the 17th of *February*, I went to Brigadier *Lewson's*, to acquaint him with the Matter; but he was out of Town: I met with him on *Tuesday*, and desir'd him to acquaint the King with it: He sent to me the next Day,

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Day, and told me the King desir'd to know who were concern'd in it: I gave him the Names of all I knew, and where they liv'd: I told him on *Thursday* what had pass'd on *Wednesday* Morning between Capt. *Charnock* and I; and what *Porter* said about it on *Wednesday* Night. I went with him to *Kensington*, and was introduced to the King by my Lord *Portland*, where I told the King what I have told in Court: It was *Friday* Night I was with the King.

Lord *Portland* Sworn.

Att. Gen. I humbly ask your Lordship, Whether Mr. *De la Rue* did make any Discovery of this Matter in your Presence to his Majesty, on *Friday* the 21st of *February*.

E. of *Portland*. Yes, The same in Substance he has told you now.

Pendergrafs Sworn.

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Pendergrafs his
Evidence

Capt. *Pendergrafs*. My Lord, About the 11th of *February* last, I was sent to by Capt. *Porter*, to come to Town. The 13th of *February*, I met him at the *Blue Posts* in *Spring-Garden*; he told me of a Design to take away the King's Life, and that Sir *Geo. Barclay*, and other Officers, were come on Purpose out of *France* to execute the same. I waited on my Lord *Portland* on *Friday* the 14th of *February*, who carried me into the King's Closet; where the King ask'd me some Questions: I told him what I knew of the Design, but desir'd to be excus'd from naming any Persons, because my Intention was only to prevent such a barbarous Design, but not to be a Witness. The King promised me I should be safe, and pressed me to name them, and assured me I should not be found to come in as an Evidence: Upon which I did tell all that I knew, and went out of Town with Mr. *Porter*, as resolving not to be an Evidence: But being satisfied after I was taken, that Mr. *Porter*, who had engaged me in it, had himself accused me, I thought my self discharged from any Obligation of Honour in Concealing it, and am willing to give an Account of any thing that I know.

Then he gave the same Evidence in Substance with Capt. *Porter* and *De la Rue*; concluding,
That

That he went out of Town with Capt. *Porter*; That they went to *Epsom* the first Night, and from thence to *Leatherhead* the next Day, where they lay till *Thursday* Morning, when *Porter*, *Keys*, and he were taken and brought to Town, where they remained Prisoners ever since.

My Lord *Cutts* was Sworn.

My Lord *Portland* and Lord *Cutts* deposed, That Mr. *Pendergrafs* had given the same Evidence in Substance before the King, as he did now in Court.

Mr. *Berthram* was Sworn.

Sol. Gen. Pray give the Court an Account of your Knowledge of *Charnock*.

Mr. *Berthram*. The 8th or 9th of *February* last I was crossing *Covent-Garden*, I lighted upon one Mr. *Trever*, who is now in *Newgate*, and he told me he was going down to *Charnock's* Lodgings; and that he heard him say he wanted to speak with me, and prevail'd upon me to go with him; and when we came to Mr. *Charnock's* Lodgings, Mr. *Charnock* took me into a Back-Room, and told me, The King, that is, King *James*, was a coming, and there was a Piece of Service to be done before he could come, and if I would assist in it, it would answer my Expectation. I ask'd him what was to be done? He answer'd, You must only go Abroad to take the Air; you will see several of your Acquaintance there. I desir'd to know what was to be done; he said, It was to cut off this Spark, or take off this Spark, (I can't tell which,) and then the King will come quickly. I understood that the Party I should meet when I went to take the Air, were to cut off the King.

Berthram's Evidence.

Att. Gen. How long had you known *Charnock*?

Berthram. By Times Seven Years; he was a Lieutenant in Col. *Parker's* Regiment, and I was a Trooper there. I told him I could not engage in the Business, for I had dispos'd of my self otherwise.

Att. Gen. He was engag'd with Sir *William Perkins*.

Berthram. On the 22d of *February* I met Mr. *Charnock* at *Lincoln's-Inn Back-Gate*; he told me

Warrants were out against us, as he heard, and we had as good, if I would come to his Lodgings, go out to *Kensington* and do the Work at once, and take him off, and then we shall be quiet and have the King peaceably here.

Mr. *Boyse* was Sworn.

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Boyse's Evi-
dence.

Sol. Gen. When were you spoke to about this Design?

Mr. *Boyse*. On *Friday* the 14th of *February*, I went to visit Mr. *King*. He told me there was a great Undertaking in Hand, and he had put my Name into the List, and if I would make one I should have a Horse; and he ask'd me if I had any Boots, and desir'd me to see if I could get any, and meet him in the Afternoon at the *Rose Tavern* in *Covent-Garden*; but in the mean Time he bid me go to Mr. *Knightley*, and he would inform me further. I went to Mr. *Knightley*, and I came to Mr. *King* again in the Afternoon, at the *Rose*, and he desir'd me not to be out of the Way the next Day, but to be at my Lodgings, and he would come or send for me, and I had Twenty Shillings of him to buy Boots, and he still referr'd me to Mr. *Knightley*. When I came to Mr. *Knightley*, he told me there was nothing to be done that Day, but I was desir'd to be always in the Way, for the Business would soon be over. After that I met Mr. *King* several Times, who still referr'd me to Mr. *Knightley*; and when I ask'd for my Horse, he told me, I should have one allotted me Time enough, and when this thing was done we should be happy; but he never told me it was to take off the King.

Att. Gen. When did you come from *France*?

Boyse. I came the Beginning of *June* last.

Att. Gen. Do you remember nothing about Sir *George Barclay*?

Boyse. He told me Sir *Geo. Barclay* would command the Party; and that there were about Forty or Forty Five that were concerned in the Design.

Mr. *Charnock's*
Remarks on
Porter's Evi-
dence.

Charnock. As to Capt. *Porter's* Evidence, He acknowledges I told him I had never seen the Commission he mentions; nor is it to be supposed the King should trouble himself to write such a Commission

mission with his own Hand; for notwithstanding his present Sufferings and Circumstances, he has still his Ministers about him, and my Lord *Middleton* is his Secretary of State, so that this is to be looked upon as a Fiction. He says that he and I were to command a Party, but he does not say what Men they were to be; and is it supposable, when the Design he talks of was so near being put in Execution, it should not be known who should engage in it. When I was examined before the Council, my Lord Keeper ask'd me, When I saw the Duke of *Berwick*? I thought it not fit to answer that Question, because I knew the Duke of *Berwick* was Outlaw'd here, and I might accuse my self if I acknowledg'd having been in his Company, though it were at *St. Germans*; but I said, I never believ'd he was in *London*, and I do not believe he was: *Porter* says I sent him a List of Men Written with my own Hand, and subscrib'd *R. C.* He does not say he saw me write it; and a Similitude of Hands was never thought good Proof in Criminal Cases, and here is no Proof of any Overt-Act, by buying Arms, or Horses, or Writing Letters, or any thing of that Nature; nor is there any Proof that while this bloody Assassination was on foot, which he owns himself to have contrived and carried on, I had so much as a Horse any where. The next Evidence is Mr. *De la Rue*, and he is a very good Evidence, if Hearsay is to be believ'd: He says, That at the *Rose Tavern* last Year, there was a Consultation about carrying King *William* into *France*, in a Vessel alive, &c. If we had got the Prince of *Orange* in our Power; if we had got King *William* in our Power, How is it possible we should ever have carried him to *Deal*; any one would believe us Madmen to entertain such a Chimera in our Heads: And he talks of my coming in a Coach to the *Nagg's-Head* Door, where I was shie of letting him see me, and afterwards came out and ask'd him to go into the Company, but he was angry because they deny'd to admit him before; and yet here was a Conference appointed the Night before to be at that Place, when Capt. *Porter*, Capt. *King*, and Mr. *Knightley* were come

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Mr. Charnock's
Remarks on
De la Rue's E-
vidence.

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come from viewing the Ground, and were to make their Report; and *Porter* told him of it, and yet they would not admit him; and I was shie of him: This must be look'd upon as improbable or impossible to be true. It was said I was to have attack'd the King with Sir *G. Barclay*, but *C. Porter* says we were to be together to attack the Guards, both cannot be true. He says that on *Wednesday*, he came to me and ask'd me of the Affair, how it went on. He doth not say what the Affair was, that it was about killing the King, nor indeed is it probable it should be; for he says, I was always shy of him, and that he could never get any Intelligence, but from Capt. *Porter*. He says, *Cranburn* brought a Lift from me to Capt. *Porter*, with *R. C.* at the bottom of it: This does not prove it was my Lift. Then he says, That *Cranburn* came to the *Blew Posts*, as from me, to acquaint them with the Disappointment; that the King did not go out that Day. This, as to me, is but Hearsay; and what am I concern'd in that which other People talk among themselves? Though they use my Name, I can't help it. And this Evidence is not only *particeps Criminis*, as I objected to Mr. *Porter*, but he declares that he set himself to trapan me. And I have read in a Book of Sir *Robert Atkins's*, that to be *particeps Criminis*, proves a Person to be a bad Man, and consequently not so Credible; especially, if it can appear, the Witness has trepan'd the Prisoner into the committing the Crime. This trepanning, proves he bore Malice against the Person trepan'd; that he intended to do him some Mischief, and design'd to take away his Life: Shall such a one, says he, be a credible Witness, and be believ'd against him? God forbid! As to Mr. *Pendergrafs*, I hope what he saith, can't be look'd upon as Evidence against me; because, whatsoever he saith relating to me, is about the Notes and Messages that he saith were brought to Capt. *Porter*. And all of it can amount, at the utmost, but to Hearsay, from other Peoples Mouths. The last Evidence that I apprehend relates to me, is that of Mr. *Berthram*. It is very improbable, that this Matter, which was to be so great a Secret, and which, I should say, was not fit to be communicated to above

Three

Page 25.
Remarks on
Pendergrafs's
Evidence.

Remarks on
Berthram's Evi-
dence.

Three People at once, I should communicate to a private Trooper. Besides, I cannot; nor, I believe, can any body else tell, what to make of the Words *taking off the Spark!* How to construe that, to make it an Evidence of a Design to kill the King. I might say, there was a Noise that King *James* would come, for it hath been in the *Gazetts*; but it is not probable, I am sure it is not true, that I should say, There was something to be done first, for the *Taking off the Spark*. He does not say, I talk'd to him of killing the King; but only, that he might ride out, and take the Air; and there he should meet with some of his Acquaintance.

As to the meeting him at *Lincoln's Inn Gate*, I do remember I met him there on the *Saturday*, the Day before I was taken up; and I did here there were Warrants out, but there never was that intimacy between him and me, that I should desire him to come to my Lodgings. I hope the Court will be of Opinion, that the Evidence produc'd against me is frivolous and weak: And that if it were all true, it is only Discourse; and they are forc'd to supply in Words, what they want in Fact. My Lord, I do insist, here is not plain or manifest Proof of any Overt Act, but only presumptions. And, my Lord, I desire the Jury may be told plainly, What is Legal Evidence, and what is not? And then, What is sufficient Proof of any one Overt Act or Species of Treason? And that you would not leave it to the Apprehension of the Jury, What they do believe, but inform them really and truly what is Legal Evidence, and what, of that sort, has been given to Day?

This is a strange sort of a Conspiracy. In the Indictment it is said, There were Forty Men to do this Fact upon the King, in his Coach, and for Attacking the Guards! Can it be suppos'd, that any Man in his Senses would do such an Act as this, without respect to his Security? The Guards are, at least, treble the Number, and better appointed. And that Forty should assault treble the Number, in divided Bodies, were only to mix Fancy and Madness with Resolution; especially, when we had no *Asylum*, no Castle or Fort to retire to, nor none to back or assist us. We ought rather to be confin'd

Page 26.

The Prisoner desires the Court to direct the Jury in Points of Law.

confin'd to *Bedlam*, than any other Place; if we could be thought Guilty of so much Rashness and Folly.

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L. C. J. What say you Mr. King?

King. My Lord, I must insist upon a great many Things Mr. *Charnock* has done: But as to what relates to my self, Capt. *Porter* saith, I went with him and Mr. *Knightley* to view the Ground: Truly, my Lord, I did go abroad with Capt. *Porter* and Mr. *Knightley*, but it was meerly to take the Air. As to Mr. *De la Rue*, he does not pretend to say, I did ever tell him of a Design to destroy the King. And as to the Sword he speaks of, I always wore one. Mr. *Pendergrafs* says he saw me at the *Rose Tavern*, where we discours'd of the Matter; but does not tell you what that Matter was. As to Mr. *Boyse*, He doth not tax me with a Design of Killing the King: Nay, he says, I did not mention any such Thing to him. As to what is an Overt Act, and what not; and what is good Proof of it, and what not, I must refer to your Lordship.

Charnock. My Lord, There is no Place laid in the Indictment, nor no set Number of Men ascertain'd.

L. C. J. You are out of Time for that; you might have spoke to it before the Evidence was given, or you may speak to it after the Verdict is brought in. Mr. *Keys*, What have you to say?

Keys. All that I have to say, I was Servant to Capt. *Porter*, and I did nothing but by his Order.

L. C. J. No Man is such a Servant, that the Commands of his Master can excuse him for committing of High Treason. It is prov'd you bought Horses, and he told you upon what Design, and you ingaged in it.

Keys. I did not hear any thing of it, my Lord: My Master was pleased to jest with me several times, and he might say Things I did not regard.

L. C. J. If you have any more to say, you must speak it now, for you cannot speak after the King's Council have summ'd up: They must have the last Word. Have you any Witneses to call, or any thing more to say?

Charnock.

The Command of a Master, no excuse for committing High Treason.

Charnock. No, my Lord; We have nothing more to say, but leave it to your Lordship entirely.

Page 30.

L. C. J. Gentlemen of the Jury, " These
" Three Prisoners at the Bar, stand Indicted of
" High Treason, for Conspiring, Compassing, and
" Imagining the Death and Destruction of the
" King, by way of Assassination. And the Indict-
" ment charges them, That they did meet and
" consult with divers other Traytors, unknown
" to the Jurors, and there did resolve on this As-
" sassination; and Horfes and Arms were pre-
" par'd and provided, for the execution of it. The
" Question that you are to Try, is, Whether
" these Persons, who stand thus Accused, are
" Guilty of this Crime or not? You have heard
" the Evidence, which you are to consider of, in
" relation to these Prisoners; and how far they
" are affected by it. The King's Council have re-
" peated the most material Parts of it, and there-
" fore I need not do it again. Now, I must tell

Lord Chief
Justice directs
the Jury.

Page 32.

you, Gentlemen, that what Mr. *Charnock* says,
" That bare Words are not Treason, is very true
" in some Cases: For loose Words, spoken with-
" out any relation to any Act or Design, are not
" Treason or an Overt-Act. But Arguments and
" Words of persuasion, to ingage in such a De-
" sign or Resolution, and directing or proposing
" the best Way for effecting it, are Overt-Acts of
" High Treason; as much, as if Two agree to-
" gether to kill the King, though the Agreement
" be Verbal only, and not reduc'd to Writing.
" Likewise, Consulting together for such a pur-
" pose, is an Overt-Act of Treason. For it is the
" Imagination, the Compassing and Designing the
" Death of the King, that is the Treason. But
" there is no Way of discovering those Compas-
" sings and Imaginations, but by some external
" Act, that may manifest such an Intention and
" Purpose: And that which is a sufficient Manife-
" station of such a Design, is an Overt-Act. But
" there have been prov'd several Meetings and
" Consultations, and Proposals at those Meetings,
" about the Ways and Methods, for bringing about
" the Design of Assassination. And it was never

What Words
are Treason,
and what
not.

The Imagi-
nation is the
Treason.
And any
thing which
manifests
that, is an
Overt-Act.
Meeting and
Consulting, an
Overt-Act.

yet

Per-suading
one to ingage
in the Design,
is an Overt-
Act.

Page 33.
Hearsay, un-
less of what
the Prisoner
himself said,
is no Evi-
dence against
him.

Accomplices
always al-
low'd good
Witnesses.

The Prisoners
are Convicted.

Page 34.

“ yet doubted, but to Meet and Consult to kill
“ the King, was an Overt-Act of High Treason.
“ And Mr. *Charnock*'s endeavouring to ingage *Ber-*
“ *thram* in this Enterprize, is another Overt-
“ Act.

“ But then, Gentlemen, as to what the Priso-
“ ners say, That the Witnesses do testify by Hear-
“ say, and that's not Evidence; it is true: And
“ therefore I did omit repeating a great part of
“ what *De la Rue* said; because, as to him, it was
“ for the most part Hearsay. But whatever Evi-
“ dence has been given of any Fact done, within
“ the Witnesses own Knowledge; or of any Con-
“ sult or Discoure of the Prisoners themselves,
“ that you are to take Notice of as good Evi-
“ dence.

“ As to what is objected to the Credibility of
“ the Witnesses, because by their own Acknow-
“ ledgment, they were involved in the same Crime.
“ Now, I must tell you, That Prisoners, under
“ those Circumstances, are Legal Witnesses: But
“ their Credits, as in all other Cases, are left to
“ your Consideration. Such Evidence has, in all
“ Ages, been allow'd good Proof; and if it were
“ not allow'd, it were hardly possible to have full
“ Proof of such secret Contrivances: And the Go-
“ vernment could never be secure against such vil-
“ lanous Enterprizes and Machinations.

“ Gentlemen, I leave it to you: You have heard
“ what the Witnesses say against the Prisoners,
“ and what the Prisoners have said for them-
“ selves: You are Judges of this Fact. If you are
“ not satisfied, That there has been sufficient Evi-
“ dence given, to prove them Guilty, you will
“ Acquit them. But if you are satisfied, that up-
“ on the Evidence, and all the Circumstances of
“ this Case, that they are Guilty, I suppose you
“ will discharge your Consciences, and give your
“ Verdict accordingly.

Then the Jury withdrew, and in less than half
an Hour return'd, and found all the Three Priso-
ners Guilty of the High Treason for which they
were Indicted. And the Court adjourn'd 'till Six
a Clock that Evening.

Post

Post Meridiem eodem Die.

About Seven a Clock, the Lord Mayor, and the Common Serjeant, with as many of the Court as would make a *Quorum*, came upon the Bench.

Clerk of the Arraignments. Robert Charnock, Hold up thy Hand, (*which he did*) You stand Convicted of High Treason, for Conspiring the Death of our Sovereign Lord the King by Assassination. What can you say for your self, Why the Court should not give Judgment upon you, to Die, according to the Law?

The Jaylor made him kneel, and when he rose up, he said as follows.

The Prisoners made to kneel, when brought to their Sentence.

Charnock. I have a great deal to say, if I knew when was the proper time to apply my self, to the saying what I have to say.

Common Serjeant. You are now call'd to, to know what you have to say.

Charnock. I have not had a fair and equal Tryal; for in the last Act of Parliament, for Regulating Tryals in Cases of Treason, the Equity and Reasonableness of a Prisoner's having that, which was deny'd me, *viz.* A Copy of the Indictment, and Council, is laid down as the Ground and Reason of making that Act. It is in the Preamble of the Act; and though, as to the Time of the Commencement, there is a certain Day prefix'd, yet the Equity of the Act is always the same; and that Equity I take my self to be entitled to.

The Prisoner insists, he ought to have the Benefit of the late Act.

Com. Serj. The Act is to commence *in futuro*: And it is the Common Law only, that this Court can proceed by, and you be try'd by. It was never practised heretofore, nor can be, 'till that Act takes place. If you have any Thing to except to the Indictment, that is very proper for you to do, and we will hear it.

A Copy of the Indictment, and Council, never allow'd by the Common Law.

Charnock. Sir, All the Facts in the Indictment, are laid in the Parish of *St. Clements Danes*; and there is not one Fact prov'd to be done there.

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Com. Serj. It is sufficient to prove them done in the County.

Charnock. We are charg'd to have bought Horses and Arms, in the Indictment; and there was no Proof

The Prisoner can't object to the Evidence, after Conviction.

The Prisoners Objections to the Frame of the Indictment.

Proof of any Horses or Arms bought: I am sure, as to me, there was not.

Com. Serj. You enter into the Evidence, which is Matter of Fact, and we cannot enter into any Consideration of it: But if you have any Objection to the Frame of the Indictment, let us hear it?

Charnock. I think the Indictment is uncertain: It says, *Quadraginta homines Equestres, aut circiter de ipsis*, Roberto Charnock, Edvardo King, & Thoma Keys. This is either not true, or it is Nonsense. For if there be Forty Horsemen, or thereabouts, of *Robert Charnock, Edward King, and Thomas Keys*, that cannot be true; for they can't make Forty. And if you take in the *aliis proditoribus ignotis*, that will make it uncertain; and that will make the Indictment void.

Com. Serj. It is said, *De ipsis Roberto Charnock, & predictis aliis proditoribus ignotis ac aliis*, which is certain enough.

Charnock. Then here is *tunc & ibidem*, What Word is that *ibidem*?

Com. Serj. It is the best Word that could be, and is always us'd in Law-pleading. Pray do not spend our Time to no purpose?

Charnock. Nay, Sir, If you be in haste; I will not trouble you any longer.

Com. Serj. You are at liberty to offer any thing that you can.

Charnock. I perceive whatever I offer, is unacceptable.

Com. Serj. You shall be heard to say, whatever you think is for your Interest to say.

Charnock. I thought these Things were for my Interest; but I see it is to no purpose, therefore I have done.

Clerk of the Arraignments. *Edward King*, Hold up thy Hand, &c. What can you say, &c.

King. What *Mr. Charnock* has said: All of it, I do imagin to be material; and since he is not to be heard, I have done, I can say no more.

Clerk of the Arraignments. *Thomas Keys*, Hold up thy Hand, &c.

Keys. I was only a Servant.

Com. Serj.

Com. Serj. You have been told, that will not excuse a Man in such a Case.

Then the Common Serjeant pronounc'd the usual Sentence in High Treason. Sentence pronounc'd.

And the Prisoners were Executed accordingly, on *Wednesday* the 18th of *March*, 1695, at *Tyburn*.

The Tryal of Sir JOHN FRIEND, the 23d of March, 8 W. III. 1695. Page 37.

Clerk of the Arraignments. Sir *John Friend*, Hold up thy Hand.

Sir *John Friend*. My Lord, I humbly move, that *William Courtney*, who is a Prisoner in the *Gatehouse*, may be sent for? He is a material Witness for me.

L. C. J. Why did you not send and desire this before?

Sir *John Friend*. I did not hear of him 'till last Night.

L. C. J. You shall have a *Habeas Corpus ad testificand'*: Let your Solicitor come hither, and you shall have a Warrant for the Writ. A Prisoner must be brought up by Habeas Corpus, where his Testimony is required.

Sir *John Friend*. If you please to give a Rule of Court, I suppose it may be done presently.

L. C. J. No, Sir *John*, It must be by Writ, or the Keeper of the *Gatehouse* can't bring him. It will be got ready presently; I believe, Time enough for you to make use of his Testimony.

Clerk of the Arraignments. Sir *J. Friend*, Hold up thy Hand, Thou standest Indicted, &c. Page 38.

“ THE Indictment set forth, That the said Sir *John Friend*, the 1st Day of *July*, in the Seventh Year of the King, and divers other Days and Times, as well before as after, at *London*, in the Parish of *St. Peter, Cornhill*, in the Ward of *Limestreet*, did Traiterously Compass, Imagin, and Contrive, to Depose and Murder the said King, and to incite and procure the *French* King to make an Invasion; and also, was adhering to the King's Enemies. And that, in prosecution

The Indictment for High Treason, in conspiring the Destruction of the King, by inciting an Invasion and Rebellion.

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Page 39.

“secution and performance of that Trayterous
 “Adhesion, the said Sir *John Friend*, the said 1st
 “Day of *July*, and divers other Days and Times,
 “during the present War with *France*, did Trai-
 “terously Consult with *Robert Charnock* (lately
 “attainted of High Treason) and divers other
 “Traytors, to the Jurors unknown, how to pro-
 “cure from the *French* King, Forces to invade
 “this Kingdom; and to levy Forces, to join with
 “them, upon such Invasion. And also did agree,
 “to send the said *Robert Charnock* into *France*, to
 “the late King *James*, to propose to him, and de-
 “sire him, to obtain the aforesaid Forces of the
 “said *French* King; and to give him Notice of such
 “their said Traiterous Intentions and Adhesions.
 “And that the said Sir *John Friend*, the said 1st
 “Day of *July*, did Traiterously accept a Com-
 “mission, under the Hand of the said late King
 “*James*, to be a Collonel of Horse, in the Forces
 “intended to be raised in this Kingdom, against
 “the King. And that, in prosecution of his said
 “Commission, he actually Raised, Listed, and
 “kept in Pay, divers Soldiers and Troops, in or-
 “der to join the *French* King's Forces, on the in-
 “tended Invasion. And also did buy and provide
 “Horses and Arms for them; against the Duty of
 “his Allegiance, the King's Peace, &c.
 To which Indictment the Prisoner pleaded *Not*
Guilty.

Where Mat-
 ter of Law
 arises, the Pri-
 soner ought
 to have
 Council.

Friend. I desire, if any Matter of Law do arise
 at my Tryal, I may be heard by my Council?

L. C. J. If any Matter of Law arise, and you
 tell us what it is; and the Court sees it is a Matter
 of Doubt, We can, and ought, to assign you Coun-
 cil. But that is time enough, when such Matter
 does arise.

Friend. I hope, as you are of Council for the
 King, as Judges; so you will be Council for me,
 and tell me, Whether any Matter that arises, be
 Law or no?

Sir *John Holt*.

L. C. J. We are bound to tell you when any
 Thing of that Nature appears, and to let you have
 all the Benefit of the Law, that possibly you can
 have;

have; for we are oblig'd to be indifferent between the King and you.

The Prisoner desir'd Pen and Ink, and to be put in Mind when he had challeng'd his *Quota*; (*which was granted him.*) And the Court assur'd him, he should receive no prejudice by any Thing of that kind; or by any slip, in point of Form.

[*Then the Jury were call'd.*

James Denew was call'd as a Juryman, and said he had no Freehold.

Att. Gen. We except against him; for we would not have any body that is not a Freeholder, serve upon the Jury. The same Exception was made to *John Cox*, and others.

The Jury being Sworn, *Mr. Mountague* open'd the Indictment, and *Mr. Attorney* open'd the Nature and Course of the Evidence.

Then *Capt. George Porter* was call'd.

Sir John Friend desired to ask him, If he were a Roman Catholick, or a Protestant? But the Court were of Opinion, he was not bound to answer that Question. For if he were not bred up in that Religion, and had been reconcil'd to the Church of *Rome*; it was to own himself Guilty of as great a Crime, as that the Prisoner was charg'd with. And although he were always of that Religion, it might subject him to very great Penalties; such as the Confiscation of two Thirds of his Estate, &c. And a Man was not bound to answer any Question, that would subject him to any Penalty or Infamy.

Friend. Well, I hope the Jury will consider it, that he will not answer the Question; and therefore they are to take it for granted, that he is so.

Capt. Porter was Sworn.

Sol. Gen. Pray give the Court an Account, What Meetings you have had with the Prisoner, about inviting the *French* over hither; or, for a Rising here?

Capt. Porter. About the latter end of *May* last, or the beginning of *June*, we had two Meetings; one at the *King's Head* in *Leadenhall Street*, the other at *Mrs. Mountjoy's*, in *St. James's Street*. At the first Meeting were present, my Lord *Aylesbury*, my Lord *Montgomery*, *Sir John Friend*, *Sir Wil-*

Page 40.
None but
Freeholders
upon the Jury.

Page 41.
Sir Tho. Trevor.
Page 42.
Page 43.

Page 44.
A Witness not
bound to an-
swer, where
his Answer
may subject
him to any
Penalty.

Sir John Hawles.
Porter's Evi-
dence of the
inviting King
James to come
over with a
body of French
Troops.
Lord Ayles-
bury in the
Plot.

liam Parkins, Sir John Fenwick, Mr. Cook, Capt. Charnock, and my self; and Mr. Goodman came in after Dinner. At both these Meetings, it was consulted of, and agreed, to send Capt. Charnock into France, to King James; to desire him to borrow of the French King, Ten Thousand Men to come over hither; Eight Thousand Foot, One Thousand Horse, and One Thousand Dragoons. Capt. Charnock said, He did not care to go upon a foolish Message; and therefore desir'd to know, What they would have him to acquaint King James with, and assure him of? They all agreed to meet the King, whenever they had Notice of his Landing, with a Body of Two Thousand Horse: Of which, every one in particular, was to bring their Quota, where-ever he would appoint.

Att. Gen. What was the second Meeting for?

Porter. The second Meeting was about a Fortnight after the first; and Mr. Charnock desir'd it, to see whether we all kept to our Resolution: And inform'd me, that he was to go in three or four Days.

Sol. Gen. What do you know of Sir J. Friend's agreeing to raise a Regiment of Horse?

Hearsay Evidence admitted.

Porter. I know nothing of that, but from others. I heard him say, He would be as ready as any Man, whenever the King came: And I have heard from Capt. Charnock, and Sir William Parkins, that he had a Commission to be a Collonel of Horse.

Att. Gen. Who were present at the second Meeting?

Porter. My Lord Aylesbury, Sir William Parkins, Capt. Charnock; and I can't tell whether my Lord Montgomery and Mr. Goodman were there, but the Prisoner at the Bar, I am sure was there.

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Att. Gen. What Discourse had you with Charnock, about the Success of his Journey?

Porter. I did not see him till about three or four Days after our Riot Business in Drury-Lane; upon the Account of which, I had been a Prisoner in Newgate. He told me, That he had been in France, and that King James thank'd them for their Kindness; but told him, the French King could not spare so many Men that Year. And withal, that he

he had been with Sir *John Friend*, and the several other Persons, with Messages from the King; but I do not know whether he had been there or no, only as he told me.

Att. Gen. What other Meetings have you had about this matter, this Winter?

Porter. I was once at the *Nagg's-Head* in *St. James's-street*, with Sir *George Barclay*, Sir *John Friend*, Sir *William Perkins*, Mr. *Ferguson*, and one *Humes*, and Capt. *Charnock* came in after Dinner; and one *Harrison*, a Popish Priest who goes by the Name of *Johnson*: I cannot tell what they discoursed of, they whispered among themselves; only Sir *George Barclay* said, that some people that were not so violent, had written over into *France*, to stop this Business: Whereupon I said, I hope you will have no Letter to Night. Upon which Sir *John Friend* reply'd, Is there any thing behind the Curtain? If there be, I am not fairly dealt withal; I will proceed no further.

L. C. J. Did Sir *John Friend* agree to the sending *Charnock* over?

Porter. Yes, I do positively affirm he did.

Capt. Brice Blair was Sworn.

Sol. Gen. Do you know the Prisoner at the Bar?

Blair. Yes, and am very sorry I am to come on such an Account against him.

Att. Gen. Give an Account what you know of Sir *John Friend*'s having a Commission from the late King, to be a Colonel of Horse.

Blair. All I can say in this Business, is written in my Paper; I refer to my Paper.

Court. You may look upon your Paper to refresh your Memory; but you must tell what you know.

Blair. About Two Years ago, Sir *John Friend* shew'd me a Commission from the late King *James* directed to him, to be a Colonel of Horse: This was at his Lodgings in *Surry-street*, in the *Strand*; and he promis'd me to be his Lieutenant Colonel; and I had the same from Mr. *Harrison*, and there were several Letters that I saw, that came from my Lord *Melford*, and Secretary *Carroll*; who were with King *James*,

Blair's Evidence of the Prisoner's having a Commission from King James, and levying Troops. The Witness may not read his Deposition

Att. Gen. What other Officers were there appointed?

Blair. *Richardson* was to be one of his Captains, *Fisher* another, and one *Hall* another: One Capt. *Evans* was to be his Captain Lieutenant, and Cap. *Vernatti* another.

Att. Gen. What did you do as Lieutenant Colonel?

Blair. I endeavour'd to procure what Officers and Men I could: I procur'd *Vernatti*, *Fisher*, and one *Hall*, that lives at *Deal*.

Att. Gen. Can you name any of the Men?

Blair. There is a Paper of Names I gave in before the Couucil.

Att. Gen. Who was to have been Lieutenant of your Troop?

Blair. One *Bertram*.

Att. Gen. Did you lay out any Money for Sir *John Friend*?

Blair. I have had several Sums of him, to drink with the Men that belong to the Regiment. And Mr. *Piggot* paid me twice 20 *l.* by his Order.

Att. Gen. How do you know, it was by Sir *John Friend's* Order?

Blair. Because it was Money that *Piggot* had received to repay Sir *John Friend* what he had advanced, for the furthering of *Parker's* Escape out of the Tower: Sir *John* told me, he had advanc'd 100 *l.* for that purpose; and King *James* paid it to *Piggot* for him in *France* immediately after; and that *Piggot* did not pay it him, but if I could get 20 *l.* of him, he would allow it: So *Piggot* paid me 20 *l.* last *May*, or *June*; and I had another Payment of 20 *l.* of him at *Michaelmas*: The last 5 *l.* of which, was paid me before Sir *John Friend* at *Jonathan's* Coffee-House.

Sol. Gen. Do you know any thing of Sir *John's* reviewing a Letter from King *James*?

Blair. About a Year ago he told me, he had a Letter from King *James*.

Sol. Gen. Had you any Discourse with Sir *John Friend* about one *Slater*.

Blair. He told me, *Slater* was to bring him several Officers; and that he intended to make
Two

Two Lieutenant Colonels, and *Slater* should be one: But when he saw I was not satisfied with that, he said he should command an Independent Troop of *Non-Swearing* Parsons.

Sol. Gen. What Discourse had you with Sir *John*, at *Jonathan's* Coffee-House?

Blair. I call'd him aside, and told him what I had heard, from *Fisher* and *Harrison*, of the Conspiracy against the King's Life; and he said he had heard of it, and he was afraid it would ruin King *James* and his Affairs: This was a little before the Plot broke out.

Att. Gen. Did you meet with him again?

Blair. Yes, he took me in his Coach to *St. Martins le Grand*, and says, he will do nothing till the *Thoulon* Fleet meet with the *Brest* Fleet; at that Time perhaps we may be all taken up, but says he, you may sculk about the Town better than I can; and therefore I'll keep my self private: And we must be as good Husbands of our Money as we can, for Money will be very scarce. And when he ask'd me what Money I should need, I told him I could not tell; for there were several indigent Officers, most of whom begg'd at that Time; and here is a Letter I had from Sir *John Friend*, to confirm my receiving Money from him.

Here he produc'd a Letter he receiv'd from Sir *John Friend*, Wherein, He desires *Blair* to meet him at *Jonathan's* Coffee-House; because it was not convenient to write a Note to Mr. *H.*

Att. Gen. What was the Letter written for?

Blair. It was about the last 20 *l.* I was to receive of *Piggot*: And when I met Sir *John*, according to this Letter, I had the Order for the 20 *l.* *H.* that is mentioned in the Letter, is *Harrison*, alias *Johnson* the Priest.

Juryman. Did you see Sir *John* write it?

Blair. No; but I know his Hand; and he own'd he had writ me such a Letter.

Sol. Gen. What have you heard Sir *John Friend* say, of Sir *John Fenwick's* being concern'd in this matter?

Blair. I heard him say, That he believed he should command the Party he was engaged in:

And, that Sir *John Fenwick* had Four Troops of Horse near *Reading*, to be in a Readiness on the Descent.

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L. C. J. For what was that Money paid you by Sir *John Fenwick*? Had you ever demanded Money of him before?

Blair. Yes, I had. And the Money was to drink with the Men that were brought in for his Regiment; and to cherish, and keep them together.

Mr. Comper. Had you any other Dealings with Sir *John Friend*?

Blair. No, never in all my Life.

Att. Gen. Do you remember your Meeting with Sir *John Friend*, when one *Ridley* was there?

Blair. Yes, it was at the *Chop-House*; and Mr. *Ridley* said, a Gentleman was lately gone to *France*, a Roman-Catholick, an antient Man; and he believ'd he would bring the last Orders: And Sir *John Friend* said he knew of it.

Sol. Gen. Did you know any thing of Mr. *Charnock's* going to *France*?

Blair. I met him upon the *Exchange* last Summer, and I told him, I thought he had been abroad; and he said he was come from *France*, but who sent him I can't tell.

Sol. Gen. Was not *Ferguson* to have been an Officer in Sir *John Friend's* Regiment?

Blair. No, but Sir *John* said he would Joyn, and Mr. *Ferguson* told me so himself about Two Years ago; and Sir *John* said he would bring in a great many Men.

Friend. As to the Commission you charge me with, I desire to know, Whether it was Sign'd or Seal'd; and what Date it was?

Blair. I cannot tell the Date indeed Sir *John*; for I never thought to come here on such an Account as this: But I think it was in Paper, Sign'd above *James Rex*, and below, *By His Majesty's Command, Melford*; and a little Seal upon the Margin.

Friend. You have charg'd me with Money to subsist and encourage Soldiers. I would only say this; You were recommended to me for a very honest

The Prisoner's Objection to Blair's Evidence.

honest Man, and you have come to me several Times, and told me, Sir, my Necessities are very great, I am ready to starve, I have a great Charge; for God's Sake, Will you be pleased to bestow something upon me, to relieve my Necessities? It's true, I have given you Money several Times; but I never gave it for any other Use but Charity. Pray declare the Truth, Whether you have not writ these Lines to me several Times; *That you were ready to starve, and begg'd of me to relieve your Necessities?*

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Blair. I have so, I do acknowledge, you did give me Charity; but I had expended so much Money in your Business that reduc'd me to that: I am sure it cost me many a Pound more than ever I had of you.

Friend. What are the Names of the Men you say you list'd for me?

Blair. I never spoke of List'ing, I only spoke of Encouraging; I have given a List of the Men into the Council; and Sir *John*, I brought in several Officers to you: I brought Capt. *Fisher*, and we din'd at Capt. *Simon's*; and there was Capt. *Ridley*, and Mr. *Richardson*; and in my hearing you promis'd Mr. *Fisher* he should be eldest Captain; upon Condition he would bring in a Troop. And, Did not I bring Capt. *Cole*, and Capt. *Neale*, Mr. *Robinson*, and Mr. *Gellibrand* to you, above a Year ago? And we din'd together at your House at *Hackney*. And you know, You then drank a Glass of Wine to Capt. *Cole*, and promis'd him, because he was of your Mother's Name, he should have a Place in the *Excise*, next one of the Commissioners; and I ask'd what you would give me, and you said, O, you shall have the Regiment Man: This was before *Robinson*, his Mother-In-Law, and Mr. *Gellibrand*.

Friend. I know not a Word of all this; I don't know *Gellibrand*, or any of them.

L. C. J. Do you ask him any more Questions?

Friend. My Lord, I have not heard half that he has said.

Juryman. *Blair* was pleased to say, he saw a Letter from King *James*.

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L. C. J.

L. C. J. No Sir, It was a Letter to King James.

Juryman. I desire he may be ask'd, if he knows the Contents of that Letter.

Blair. He shew'd me the Letter that he said he had writ to King James, and there was his Hand to it; it was at Mr. Piggot's Mother's House, I din'd with him there that Day; and when he shew'd me the Letter, I told him I was so well pleas'd with the Penning it, that I believ'd Mr. Ferguson had a hand it; and he was very angry, that I should think he was not able to write; and did not write the Letter himself: It was about the Affairs of the Regiment. This was about a Year and half ago.

Friend. I declare, in the Presence of God, I never writ any such Letter as he chargeth me with.

Blair. And, I declare, in the Presence of God, you shew'd me such a Letter.

Friend. Yes, you may, but I am a Protestant, and you are a Papist; you may do any thing: He must not be ask'd whether he is a Papist, but I hope you will take Notice Country-men, that these Witnesses are Papists; and they think they merit Heaven by Swearing against Hereticks.

Bertram was Sworn.

Bertram permitted to give
hearsay Evidence.

Bertram. I have known Capt. Blair Eight or Nine Years; and he has told me for Two Years last past, that Sir John Friend was to have a Regiment of Horse, that were to be raised, and lie posted about the Town; and Capt. Blair was to be Lieutenant Colonel to the Regiment, and I was to be Lieutenant of Capt. Blair's Troop; and he oblig'd me to bring as many Men and Horses as I could into the Regiment, and told me Capt. Fisher, Capt. Vernatti, and Capt. Cole were to be Captains in the Regiment.

Friend. Do you know me Sir.

Bertram. No Sir, I never was in your Company in my Life, I only tell you what I heard of Capt. Blair; I do not know that ever I saw your Face.

L. C. J. This is no Evidence against you Sir John Friend, he is only brought to confirm the Testimony of Capt. Blair; that Blair spoke of it
long

long before he gave his Evidence, and so it is not a new thing, now invented by him.

Friend. As to Mr. *Porter's* Evidence, I own I was at the Meeting at the *King's Head* in *Leaden-hall-street*; but there was nothing spoken relating to the Government, or raising of Men: These Witnesses are *Papists*, and are not legal Witnesses against a *Protestant*.

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L. C. J. Truly I think they are; I know nothing to the contrary.

Papists legal
Witnesses.

Friend. I am advis'd they are not, by the 25 *Edw. 3.*

Sol. Gen. There was no such Thing as a *Protestant* in the Time of *Edw. 3.*

Friend. There is the 3 *Jac. 1. c. 4.* and the 30 *Car. 2. c. 2.* whereby it is plain, they are not to be believed against *Protestants*; because they believe them guilty of damnable Heresy: And by those Statutes, they are reputed infamous.

L. C. J. Well, the Statute-Book shall be look'd into.

Then *William Courtney* appear'd.

Friend. I desire you would speak what you know of Capt. *Blair*.

Courtney. Gentlemen, I have been a Prisoner in the *Gate-House* about a Month, and while I was there, Capt. *Blair* was brought in Prisoner, and being my old Acquaintance, I told him I was sorry to see him there; and hop'd he was none of those concern'd in the Plot: He said he was in the Proclamation, but that he was innocent, and knew nothing of the Plot, or the Assassination; or any thing like it.

Courtney's Evidence, that *Blair* said he went against his Conscience.

Friend. Do you believe he is a Roman-Catholick?

Courtney. I do not know his Religion, but he bore the Character of one.

Friend. Do you know Capt. *Porter* Sir, Is he a Roman-Catholick?

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Courtney. Yes, I know him, he has the Character of a Roman Catholick ——— but I have something more to say: The last *Saturday* but one, the *Flying-Post* being cry'd, Ensign *Tooley* (who was a Prisoner with us in the *Gate-House*) bought

bought it, and brought it into my Chamber, and I desired him to read it; in the mean time Capt. *Blair* came in, and as'd what News; I reply'd, it is said you are making a great Discovery, that you were to be Lieutenant-Colonel to Sir *John Friend*, and had receiv'd a great deal of Substinance Money for the Regiment: Says he, they may put what they will in their News, but I know of no Regiment, nor of any Commission: The man that read the Book, will say the same that I do ——— And on *Friday* Night last, I came to see Captain *Blair*, and his Wife was with him, and Capt. *Blair* was very ill, and clapping his Hands and groaning; and moving himself, he seem'd in such a miserable Condition, that I thought he was giving up the Ghost. I ask'd him upon what Account he was so bad, and if he had got some great Cold; he told me, no: Well, said I, Capt. *Blair*, I understand you are going to morrow to *Hicks's-Hall*; I pray God direct you. (*says he several times*) I pray God direct us all, Life is sweet. Oh, says his Wife, Dear Sir, he would never do it, but to save his Life; it goes against his Conscience. Said I to him, you have had the Character of an honest Man, I hope you will shew your self such; I wish no Man's Blood lie at your Door: Says he, I am an unfortunate Man, that is the Thing that troubles me, or to that Purpose; and shew'd all the Remorse of Conscience that could be in the World. I spoke of this innocently among the Prisoners; and it seems it was communicated to Sir *John Friend*, and so I am brought here to testifie it: As for Sir *John Friend*, I never saw him 'till to Day in all my Life, as I know of.

L. C. J. Capt. *Blair*, What say you to this?

Blair. My Lord, this Gentleman crouded himself in upon me, my Wife was with me; and he told me he had a Cup of Brandy, which would be good for me if I had a Cold: (I desir'd no Company might come to me) Says he, Capt. *Blair*, I have heard you have been an honest Gentleman all along, and you are going to *Hicks's-Hall* to morrow, and a great deal of such Discourse as that; and I pray God Almighty direct you

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Blair is call'd again to confront him.

you : That's all that that I know pass'd. I was very ill, but as for any thing of Remorse of Conscience, as I hope for Mercy and Salvation I never expressed any such Thing to him ; nor did my Wife say I was troubled, or going to do any thing against my Conscience.

The Keeper of the *Gate-House* Sworn:

Sol. Gen. Did Capt. *Blair* desire no body should come to him but his Wife ?

Keeper. No body was to come to him, unless they forc'd themselves upon him : And no body did come to him that I know of.

Blair. While *Courtney* was with me, my Wife desired me not to say any thing before him ; because said she, I do not know but he may be a *Trapan*.

Courtney. Upon the Word of an honest Man, and my Reputation is as dear to me, as yours is to you : She said nothing of that. She told me, you were going to do that which was against your Conscience ; and you would not do it but to save your Life.

Att. Gen. Pray, What is this Man committed for ?

Keeper. He is committed for Suspicion of Treason.

Courtney. I have been taken up Five Times upon Suspicion ; and this last Time, I was committed to the *Gate-House*.

Att. Gen. Where do you live Sir ?

Courtney. I am an *Irish* Man born ; but have Lodg'd about Four Years and a half in old *Southampton* Buildings ; there are several Persons can come and give a Testimony of me.

Sol. Gen. How came you to go to Mr. *Blair*, when he desir'd no body should come at him ?

Courtney. He may say what he pleases, for he lay first in one Room, and then in another ; and he could never go to the necessary House but he must go through my Room ; and if you send for Mr. *Tooley*, and Capt. *Courtney*, they will swear that these Things pass'd in their Presence ; except what pass'd between him and me, in his own Chamber. As for what he said of knowing nothing of the

the Plot, it was talk'd up and down in the Prison; and so it came to me; and I invited him into my Chamber, as my old Acquaintance, and he declar'd he knew nothing of the Matter.

Capt. *Blair*. I believe I might at first; and I told him the Truth, for I was Innocent as to the Assassination. And as to the Invasion, there was only some general Discourse; and I was not willing to explain my self among such People as they were, when they ask'd me about it. I had to do with the King and Council.

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Witnesses
call'd to the
Prisoner's Re-
putation.

Mr. *King* was call'd as a Witness for the Prisoner, and depos'd, That *Porter* was taken to be a Papist, at *Epsom*. That Sir *John Friend* was a Protestant, and would not permit any Discourses, reflecting upon the Government, in his Company. And that he had heard him say, If he had not taken the Oaths to King *James*, he could as freely take the Oaths to the present Government, as any Man in *England*. And that he would live peaceably under the Government, though he was double Tax'd, because he did not take the Oaths.

Kains was call'd, and depos'd, That *Porter* and *Blair* were reputed Roman Catholicks. That he had known the Prisoner a long time, and took him to be a Protestant; and that he never heard him reflect upon the Government.

Mr. *Carpenter* depos'd to the same effect.

Mr. *Hawkins* also depos'd, That he had known the Prisoner these Twenty Years; and that he never heard him reflect upon the Government. That he was a good Protestant, and went to Church.

L. C. J. What since the Revolution?

Hawkins. I have not been so conversant with him since, because I liv'd out of Town.

Major *Mould* depos'd, He believ'd the Prisoner to be as good a Protestant as any in *England*; and that he never heard him speak disrespectfully of the Government.

Luston.
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Mr. *Luston* depos'd, That Sir *John Friend* had employ'd him as Chaplain in his House, both before and after the Revolution. And that since the Revolution, they always pray'd for the present King, and the late Queen *Mary*; at which Sir *John* was

was many times present. And that he had often discours'd with him about the Popish Religion, and he had spoken with detestation of the Principles of the Papists. And that he had often heard him say, though he could not comply with the present Government, he would live peaceably under it: And that he would never be in a Plot, or concern himself in any Design against it. And that the Deponent had been out of his Family about five Years.

Mr. *Hoadley* depos'd, That he believ'd Sir *John Friend* a settled Protestant. That he had frequent occasion of discoursing with him, having two of his Nephews at School with him. And that he has often said, he would never be in a Plot; and us'd this Expression, *Catch me in the Corn, and put me in the Pound*. That he has express'd great detestation of King-killing and Assassinating Crown'd Heads. That he had heard him discourse in this manner, five or six times within these two Years.

Hoadley, an Evidence, as to the Prisoner's Principles.

Mr. *Willis* depos'd, That he was a Protestant, and us'd to come to Church.

L. C. J. Has he been at Church within this Year or two?

Willis. He has been gone from *Hackney* above a Year?

Mr. *Montague*. Can you say you have seen him at Church, within these four Years?

Willis. Truly, I cannot call to Mind whether I have or no.

Then the Prisoner repeated his Objection, as to the Witnesses being Papists; and desired the Oaths might be tender'd them.

L. C. J. That is not our Business at this time.

Friend. You were pleas'd to promise me, that if any Matter of Law did arise, my Council should be heard.

L. C. J. First, Let us know if there be any such Law as you mention: I would be glad to see the Council that would own this Objection, That Papists are not good Witnesses.

Friend. I desire the 25 of *Ed. 3.* may be read; I am advis'd, that a Consultation to levy War, is no Treason; without Rebellion and Insurrection.
And

And inviting Men to come from beyond Sea, is no Treason; unless a Foreign Prince be invited to come with his own Subjects.

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Then the Statute of the 25 *Ed.* 3. about Treasons, was read; and great part of 3 *Jac.* 1. c. 5. entitled, *An Act for the Discovering and Repressing Popish Recusants.*

Friend. I only gather from hence, that no Roman Catholick is capable of swearing against a Protestant; because the Pope and the Priests can absolve them from their Oaths.

L. C. J. Have you any Witnesses to produce, that these two Men have any Displeasure or Malice against you, that they should accuse you falsely?

The Prisoner complain'd, he had not had time to produce his Witnesses; and that his Council were not permitted to come to him, till *Friday* or *Saturday* last. And that his Kinsman, Colonel *Cash*, who might have been of use to him, was taken into Custody of a Messenger.

Mr. Baker affirm'd, He did attend Sir *John* the last *Tuesday*, to give him Notice of Tryal; and told him, he would procure him an Order for Council. That Sir *John* had named Sir *Bartholomew Shower*, and *Mr. Northey*, who could not attend him; and that on *Thursday*, he had an Order for others. And the Attorney General said, As to his Kinsman, *Mr. Cash*, he was secur'd for Suspicion of Treason.

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L. C. J. If you had wanted any Witnesses, and had not been so fully prepared, as you expected to be, you should have mov'd before the Tryal came on, to put it off.

Friend. I was not so much a Lawyer to know these Things: But it's hard a Man that is Innocent, must suffer at this rate. I have been disappointed in every Thing; for these Gentlemen have not been permitted to answer, Whether they are Roman Catholicks or no?

Just. Rokeby. Nor have your Witnesses prov'd, that they are Roman Catholicks.

L. C. J. Well, I can't tell what Avail that would have been of, if they had been prov'd so: Have you any more to say, Sir *John Friend*?

Friend.

Friend. No, my Lord, I leave it to God, and you, and the Jury to consider of it.

Mr. *Sollicitor* summ'd up the Evidence, and by way of Preface, took Notice of the Fairness of the Tryal: And that their was a Time, within their Memories, when Persons of better Quality than the Prisoner, had not the same Liberty of making their Defence. By whom, no doubt, he meant my Lord *Russel*, Col. *Sidney*, &c. but omits saying any Thing to the Points of Law that were started, *viz.* *That consulting to Levy War, could not be an Overt-Act of Compassing the King's Death. And that consulting to levy War, was not High Treason, unless a War were actually Levy'd, &c.* Of this he says not one Word; though he, and Sir *Robert Atkins*, had spent so many Sheets in Remarking on the Illegallity of the proceedings against my Lord *Russel*; because my Lord's consulting to Levy War (or to seize the Guards, which is all one) was laid as an Overt-Act of Compassing the King's Death, &c. But the Reader will observe, that my Lord Chief Justice *Holt*, in his Directions to the Jury, at this Tryal; has, in a Paragraph or two, fully answer'd those Voluminous Remarks; and shewn, how the Law has ever been taken, as to these Points. And indeed, when we see the Whigs proceeding in the very same Manner, drawing up their Indictments in the same Form, and laying the very same Facts, as Overt-Acts of Compassing, &c. at which they made so loud an Outcry in a late Reign! When we see Sir *John Hawles* himself do this, Is not this a sufficient Confutation of his own Remarks? Does not this effectually silence all those Clamours they raised against the Courts of Justice, and the King's Council; in those Days? It was not insisted on, in the behalf of Sir *John Friend*, as it was by the Advocate for my Lord *Russel*; *That the being at a Treasonable Consult, was but a Misprision.* This was a Doctrine should be buried in Oblivion, now the Tables are turn'd: Such Maxims are only to be encourag'd, when the *Good Old Cause* is in agitation. Then only it is seasonable to bully Courts of Justice, and brand all Legal Prosecutions, with odious Epithets. At Sir *John*

Sir John Hawles.

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Mr. *Sollicitor*'s
Reply to the
Prisoner's De-
fence.

Friend's Tryal, though there was but one Witness to the Consult, and One to the Levying Men, it was not thought he had hard Measure, because there wanted two Witnesses to the same Fact. For since each Fact had a tendency to the same Species of Treason, *viz.* The Destruction of the Prince; they were justly deem'd two Witnesses, within the Intent of the 25 of *Ed. 3.* Then, Why all those malicious Remarks on my Lord *Russel's* Case, which was so exactly parallel to this? and, With how ill a Grace must the Remarker appear as Council for the King, at the Tryal of Sir *John Friend*? But since he did appear, it was his Wisdom to entertain the Court with any Thing, rather than Matter of Law? lest his own Arguments had been retorted upon him.

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Mr. Cowper's
Reply to the
Prisoner's De-
fence.

Mr. *Cowper* reply'd to the Prisoner's Defence, That *Blair's* not confessing himself concern'd in the Plot, to his fellow Prisoners, who would not have lik'd him for making such Confession; but, perhaps, would have destroy'd him for so doing; was no Argument of his being unacquainted with the Design.

That although Capt. *Blair* did express some Reluctancy to his giving Evidence against the Prisoner, who had been his Friend, and intimate Acquaintance (though he denies this upon his Oath) it was but natural to do so; and what, indeed, he had done at his first appearing in Court, was no Argument against his Testimony.

That as to the Objection of the Witnesses being Papists, they were the rather to be credited, because they swore to the disadvantage of the Popish Cause: And as to his saying they might be absolv'd for it, he thought, it was one of the last Things their Priests would absolve them of.

That as to what the Clergymen depos'd, of the Prisoner's declaring frequently, he would not be in a Plot, when nothing occur'd to introduce such Discourse; it shews, that this always swam uppermost, his Professions being made so causelessly. And that weak Men, and Children, often discover their knowledge of a Secret intrusted to them, by a repeated

repeated and unnecessary declaring that they know nothing of the Matter.

As to the Objection, That a Conspiracy to Levy War, is not Treason; he acknowledg'd, That a Conspiracy barely to Levy War, was not; but that the end of that War, being to join the late King, on his descent with a *French* Power, and depose the present King. This was a killing him in the Eye of the Law, and was High Treason, by whatever means they intended to effect it.

L. C. J. " Gentlemen of the Jury, Sir *John Friend*, the Prisoner at the Bar, is indicted for High Treason: The Treason that is mentioned in the Indictment, is Conspiring, Compassing, and Imagining the Death and Destruction of the King. To prove this Conspiracy, there are two Overt-Acts principally insisted on. The one is, The consulting and agreeing with divers others, to send Mr. *Charnock* into *France*, to King *James*, to desire him to persuade the *French* King to send over Forces to assist them; who were to furnish other Forces, for the raising a War within this Kingdom, in order to depose the King; and accordingly Mr. *Charnock* was sent upon that Design. The other Overt-Act is, The Prisoner's having a Commission from the late King, and preparing and directing Men to be levy'd; and to be ready to be in a Regiment, of which Sir *John Friend* was, by that Commission, to be Colonel; and this was also to assist in the Restoration of King *James*: And in order thereunto, in the Deposing and Expulsion of King *William*. These are the two Overt-Acts; and to prove Sir *John Friend* Guilty of these, there are two Witnesses, Capt. *Porter*, who speaks to the first; and Capt. *Blair*, who speaks to the second. Then he proceeded to repeat their Evidence, the Prisoner's Defence, and the Inferences drawn from thence on both Sides, and goes on. There is another Thing the Prisoner did insist upon, and that is Matter of Law. The Statute of the 25 *Ed.* 3. has been read; which is the great Statute about Treasons, and that contains divers Species of Treason, and declares what

The Chief Justices directions to the Jury.

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Where the War consulted of, is intended to depose the Prince, or to put any Force or Restraint upon him, such Consultation is High Treason.

But where a War has not a tendency to endanger the King's Person, the Consultation is not Treason, unless such a War is actually levy'd.

“ shall be Treason. One Treason is, the Com-
 “ passing and Imagining the Death of the King:
 “ Another is, the Levying of War. Now, says he,
 “ Here is no War actually Levy'd; and a bare
 “ Conspiracy or Design to Levy War, does not
 “ come within this Law against Treason. Now
 “ I must tell you, if there be only a Conspiracy
 “ to Levy War, it is not Treason. But if the De-
 “ sign and Conspiracy be either to Kill the King,
 “ or to Depose him, or Imprison him, or put any
 “ Force or Restraint upon him, and the Way and
 “ Method of effecting these, is by Levying a War;
 “ There the Consultation, and the Conspiracy to
 “ Levy War for that purpose, is High Treason,
 “ though no War be Levy'd. For such Consulta-
 “ tion and Conspiracy is an Overt-Act, proving
 “ the Compassing the Death of the King; which
 “ is the first Treason mentioned in the Statute of
 “ the 25 Ed. 3. For the Words of that Statute are,
 “ *That if any Man shall Compass or Imagin the*
 “ *Death of the King.* Now, Where a Man designs
 “ the Death, Deposition, or Destruction of the King,
 “ and pursuant to that Design, agrees and consults
 “ to Levy War: That this should not be High
 “ Treason, though a War be not actually Levy'd,
 “ is very strange Doctrine; and the contrary has
 “ always been held to be Law. There may a War
 “ be Levy'd, without any Design upon the King's
 “ Person, or endangering of it; which, if actually
 “ Levy'd, is High Treason: But a bare designing
 “ to Levy War, without more, will not be Trea-
 “ son. As for Example, Rising with Force to pull
 “ down all Inclosures, to expel Strangers, to pull
 “ down Bawdy-Houses, is Levying of War, and
 “ Treason; but a bare purposing and designing to
 “ Raise a Force for such Purposes, is not Treason.
 “ If Persons do assemble themselves, and act with
 “ Force, in opposition to some Law, which they
 “ think inconvenient, and hope thereby to get it
 “ Repeal'd; this is a Levying War and Treason,
 “ though purposing and designing it, is not so. So
 “ when they endeavour, in great Numbers, with
 “ force to make some Reformation, without pur-
 “ suing the Methods of Law, that is a Levying
 “ War

“ War and Treason ; but the purposing and design-
“ ing it, is not so.

“ But if there be a Purpose and Design to de-
“ stroy the King, and to Depose him from his
“ Throne ; or to Restrain him, or have any Power
“ over him, which is proposed or designed to be
“ effected by War that is to be Levy'd : Such a
“ Conspiracy and Consultation to Levy War, for
“ the bringing this to pass, is an Overt-Act of High
“ Treason. So that as to that Objection he makes
“ in point of Law, it is of no Force ; if there be
“ Evidence sufficient to convince you, that he did
“ conspire to Levy War for such an end.

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Juryman. My Lord, We desire we may have
that Letter with us, that was produc'd here.

L. C. J. You cannot have it by Law, but you
may look upon it in Court, before you go away, if
you will.

The Jury
cannot have
a Letter with
them out of
Court.
He is Con-
victed.

The Jury withdrew, and within a quarter of an
Hour, return'd, and brought the Prisoner in *Guilty*.

The Tryal of Sir WILLIAM PARKINS, Knt.
24 March, 8 W. III. 1695.

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Clerk of the Arraignments. Sir William Parkins,
Hold up thy Hand.

Parkins. My Lord, My Wife sent up a Trunk
of Linnen, and other necessary Things for our use ;
and the Sheriffs of *London* have seiz'd it, and do
detain it, and I have nothing to subsist on, but what
is there.

Sheriff Buckingham. There was a Trunk at Mr.
Secretary *Trumball's* Office, that had been seiz'd,
and was open'd there. There is some Linnen, and
Two or Three Hundred Ounces of Plate in it. We
had it at the Secretary's Office, and gave a Re-
ceipt to return it again when call'd for. We did
not seize it.

L. C. J. He ought to have his Plate to sell, to
support him, that he may have Bread. Let your
Wife make Application for it at the Secretary's,
it cannot now be done here.

Sir John Holt.

Parkins. They talk'd of an Order of Council they had for the seizing it; but when I came to inquire into it, there was no Order about it, but only to search and examin it.

Page 66.

L. C. J. Well, some Order shall be taken about it.

Sheriff Buckingham. My Lord, We have given a Receipt to the Secretary for it.

A Prisoner
ought to have
his Goods to
subsist him.

L. C. J. But he must have wherewithal to subsist, and buy him Bread, while he is in Prison: Some Care or other must be taken in it, and shall. But go on now to Arraign the Prisoner.

Clerk of the Arraignments. Hold up thy Hand, (*which he did*) Thou standest Indicted, &c.

The Indict-
ment for
High Trea-
son, in Con-
spiring the
Destruction
of the King,
and in order
thereto, pro-
moting the
Assassination,
and an Inva-
sion and Re-
bellion.

“ **T**HE Indictment sets forth, That whereas
“ there is, and for a long Time hath been,
“ an open, cruel, and bloody War, carried on by
“ *Lewis* the *French* King, against the most Serene
“ and Illustrious King *William*, our present Sove-
“ reign. That the said Sir *William Parkins*, de-
“ signing to alter and subvert the Government of
“ this Kingdom, to depose and destroy his said
“ Sovereign King *William*, and to enslave his Faith-
“ ful Subjects, by bringing them under the Power
“ of the aforesaid *French* King. He the said Sir
“ *William Parkins*, well knowing the said *French*
“ King, and his Subjects, to be Enemies of our
“ said Lord the King; the 1st Day of *July*, in the
“ 7th Year of the King, and divers other Days and
“ Times, at the Parish of *St. Paul, Covent-Garden*,
“ in the County of *Middlesex*, Did Traiterously
“ Imagin, Compass, and Contrive, the Death of
“ the said King, his lawful Sovereign; and to pro-
“ cure an Invasion of this Kingdom, by the afore-
“ said *French* King. And did, during the said War,
“ Traiterously Aid and Adhere to the said *French*
“ King, and his Subjects, Enemies of our said Lord
“ the King. And that in prosecution of the said
“ Adhesion, He, together with *Robert Charnock*,
“ lately Attainted, and divers other Traytors,
“ did meet and consult, how to procure Forces
“ from the said *French* King, to bring about the
“ said Invasion; and to join and unite with them
“ upon their Landing. And further did consult
“ and agree, to send the said *Robert Charnock* into
“ *France*,

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“ France, to the late King James, to desire him
 “ to obtain of the said French King, the Forces
 “ afore said, for the intended Invasion; and to give
 “ Intelligence of the said Traiterous Intentions
 “ and Adhesions; as also, to receive Intelligence
 “ from thence, concerning the said intended In-
 “ vasion. And that the said Sir William Parkins,
 “ to render the said Invasion the more easy, after-
 “ wards, viz. the 10th of February, in the Year
 “ above said, at the Parish and County afore said,
 “ Did, together with the said Robert Charnock,
 “ and other Traytors, consult and agree to Affas-
 “ sinate his said Sovereign Lord the King, that now
 “ is. And that Forty Horsemen, with Arms, &c.
 “ should form an Ambuscade for that purpose:
 “ And that the said Sir William Parkins, did un-
 “ dertake to provide Five of the said Horses, to be
 “ employ’d in that Service. And did buy and pro-
 “ vide Horses, and Arms, and List Men, in or-
 “ der to raise a Rebellion, and join the said French
 “ King’s Forces, so soon as the said Assassination
 “ and Murder of the said King, his Sovereign,
 “ should be committed and perpetrated. Against
 “ the Duty of his Aliiegiance, the King’s Peace, &c.
 To which Indictment he pleaded *Not Guilty*.

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The Prisoner desired his Tryal might be put off,
 because he had not had Time to send for his Wit-
 nesses: That he had Notice of his Tryal, but on
Wednesday before, and could get no body to come
 to him till *Friday*.

L. C. J. You had sufficient Notice, and you
 name no Witnesses that are wanting, but only say
 you have divers Witnesses. Your Commitment
 charg’d you with High Treason, and you might
 have had a Copy of it; and seen thereby, what
 you were accus’d of.

A Prisoner
 may demand
 a Copy of his
 Commitment.

Keeper. We never deny it, if it be demanded.

L. C. J. You cannot deny it; You know what
 Penalty you are under if you do.

Parkins. I desire I may have Council; there is a
 new Act which allows Council.

L. C. J. But that does not commence yet, Sir
 William.

Council de-
 ny’d,

Parkins. It wants but one Day.

L. C. J. That is the same Thing as if it were a much longer Time: For we are to proceed according to what the Law is, and not what it will be.

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The Court deny to put off the Tryal on Allegations, without Oath.

The first Paragraph of the new Act was read.
Parkins. The Law says, It is Just and Reasonable that it should be so: And what is Just and Reasonable to Morrow, is so to Day. And if my Notice had been a convenient Notice, I had had the Benefit of the Act of Parliament: And no one can want the Advantage of that Act from henceforward, nor suffer by such Want, but my self; which is a particular Hardship upon me. Pray, my Lord, let the Tryal be put off till another Day?

L. C. J. You shew no Reason for it, you name no Witnesses that you want, nor have we any Oath, as we ought to have in such a Case.

Parkins. I will do both, if your Lordship will oblige me to it.

L. C. J. There ought to be an Oath certainly; but we think you have had a fair and convenient Notice. Go on Mr. *Hardesty* to swear the Jury.

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The Prisoner challeng'd two of the Jury, as being Servants to the King.

Being the King's Servant, no cause of Challenge.

L. C. J. That is no Cause of Challenge; however, the King's Council do not insist upon it, if there are enough besides. I speak this, because I would not have it go for a Precedent, nor have it understood, that the Cause you assign, is a good Cause.

After the Prisoner had challeng'd above Thirty others peremptorily, a Jury was Sworn, viz.

<i>William Northey, Esq;</i>	<i>Thomas Edling, Gent.</i>
<i>Edward Gold, Esq;</i>	<i>Robert Sanderson, Gent.</i>
<i>Daniel Thomas, Esq;</i>	<i>Ralph Marsh, Gent.</i>
<i>Henry Whichcot, Esq;</i>	<i>John Whiston, Gent.</i>
<i>Robert Bampton, Gent.</i>	<i>Thomas Heams, Gent.</i>
<i>Thomas Sutton, Gent.</i>	<i>Nicholas Rufford, Gent.</i>

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Parkins. My Lord, I beg if there be any Fault in the Indictment, you will let me know it.

L. C. J. Truly I have observ'd no Fault in the Indictment, I do not know of any.

Then

Then Mr. *Montague* open'd the Indictment, and Mr. *Attorney* the Nature and Course of the Evidence. And,

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Page 73.
Page 74.

Mr. *Porter* was Sworn.

Sol. Gen. Pray give the Court an Account of the Meeting at the *King's Head* in *Leadenhall-street*? Who was there? and, What Resolutions they came to?

Sir John Hawles.

Capt. *Porter*. About the latter end of *May* last, or the beginning of *June*, we had two Meetings, one at the *King's Head* in *Leadenhall-street*; the other, at Mrs. *Mountjoy's*, near Sir *John Fenwick's* Lodging, in *St. James's Street*. At the first Meeting, was my Lord *Aylesbury*, my Lord *Montgomery*, Sir *John Friend*, Sir *William Parkins*, Sir *John Fenwick*, Capt. *Charnock*, Mr. *Cook*, and my self; and Mr. *Goodman* came in after Dinner. There we consulted of the best Way to bring in King *James*, and to send Mr. *Charnock* to invite him over; and desire him to interpose with the *French King*, to spare him Ten Thousand Men to come over with him; Eight Thousand Foot, One Thousand Horse, and One Thousand Dragoons. And we did agree, that Mr. *Charnock* should assure the King, if he would come over, that we would meet him at his Landing, with a Body of Two Thousand Horse. And Mr. *Charnock* undertook to go over with this Message; but, afterwards, desired us to meet once again at Mrs. *Mountjoy's*, before he went away; to know, Whether we kept to our first Resolution? And we did agree to what was resolv'd upon at first: And, he said, he would go in two or three Days. There was Sir *William Parkins*, my Lord *Aylesbury*, Sir *John Friend*, Capt. *Charnock*, Mr. *Cook*, and my self: I can't tell whether my Lord *Montgomery* or Mr. *Goodman* were there.

Porter's Evidence of sending *Charnock* into France.

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Att. Gen. Pray when did you see Capt. *Charnock* after that?

Sir Tho. Trevor.

Porter. It was when I was in Prison about the Riot; and he told me he had been there, but there would be nothing done in that Matter at present: For King *James* said, the *French King* could not then spare so many Men; though he thank'd us for

for our kind Offers. And he said, he had been with my Lord *Aylesbury*, Sir *William Parkins*, and the several other People of Quality; and carried them the particular Messages he had in Command from the King.

Att. Gen. Now, Pray tell us what you know of the Assassination?

Porter's Evi-
dence of the
Assassination.

Porter. Some Weeks before I heard of the Assassination, I came to Lodge in the House in *Norfolk-street*, where Captain *Charnock* Lodg'd, and where Sir *William Parkins* lodg'd when he came to Town. Most commonly we went to the Tavern in an Evening, or drunk a Bottle at our own Lodgings: But one Morning, I ask'd Mr. *Charnock* if I should not see him at Night? and he said, He was engag'd in private Company. That there were some Gentlemen lately come from *France*, who would see no body but him; and that there was something to be done for the King's Service: Whereupon, I desir'd to be concern'd in it. A little after, I fell ill of the Gout, and Mr. *Charnock* came to Visit me; and I ask'd him, What those Gentlemen were come from *France* about? He told me, It was Sir *George Barclay* that came from *France*, and several other Officers with him: And that he had a Commission from the late King *James*, to Levy War against the Person of King *William*, (or the Prince of *Orange*, as I think he call'd him) and desir'd to know, How many Men I could bring? Some few Days after, Capt. *Charnock* came into my Chamber, and brought Sir *George Barclay* and Major *Holmes*, that said he was come from *France*. We had little, but general Discourse then. But a little after I got well of the Gout, and we had several Meetings, at the *Globe Tavern* in *Hatton-Garden*, at the *Nag's Head* in *Covent-Garden*, and at the *Sun* in the *Strand*; where Sir *William Parkins* was always present. And there we did consult of the best Ways to Assassinate the King, as he came from *Richmond* after Hunting. Sir *George Barclay* said, He had received 800 *l.* from King *James's* Secretary, towards the buying of Horses, and furnishing both Horses and Men for the Expedition: And it was consider'd of, how

how many Men it would be necessary to bring. The Number agreed upon, was about Forty; of which, Sir *George Barclay* was to provide Twenty. ~~He~~ promis'd to bring Seven or Eight Horses; Sir *William Parkins* engaged to bring Five, whereof Three should be mounted with his own Men; and the other two, my Men were to mount upon.

I ask'd Sir *William Parkins*, one Evening, Whether he had seen the Commission? He said, He had; and that because King *James* would not trust any of his Ministers, it was written and signed with the King's own Hand. The purport of it was, for Levying War on the Person of the King; whom, I think, he stil'd the Prince of *Orange*.

Att. Gen. Pray give us an Account of your going to view the Ground?

Porter. There were several Propositions about the Place, where it was to be done: One was to be on the other side the Water, by Ambuscade, in *Richmond Park*; the other was to be on this side the Water, after the King Landed. But because there was difference of Opinions, it was resolv'd that some should go and view the Ground; and I was appointed for one, Mr. *Knightley* for another, and Mr. *King* would needs go with us for a Third, and we three did go. We lay all Night at *Knightf-bridge*, and the next Day, went and view'd the Grounds on both sides the River; and came back that Evening to the *Nag's Head*, according to appointment. Where was Sir *William Parkins*, Sir *George Barclay*, and Mr. *Charnock*; and we gave an Account that we had view'd both Places. And upon our Report, it was resolv'd that it should be done on this side the Water, in the Lane between *Brentford* and *Turnham-Green*.

Att. Gen. Did Sir *William Parkins* agree to that Resolution?

Porter. It was in general agreed to by all that were there.

Att. Gen. What Days were fix'd for the execution of this Design?

Porter. *Saturday* the 15th, and *Saturday* the 22d; because, on *Saturdays*, the King us'd to go a Hunting and Shooting. And we had two Men lodg'd

lodg'd at *Kinsington*, to bring Intelligence of the King's going out. The first Day, *Durance* brought Word in the Morning, that the Guards were gone abroad: And afterwards there came Notice, that the King would not go abroad that Day; for which Reason we adjourn'd it to the next *Saturday*. The *Friday* before the 22d, we met at the *Sun Tavern* in the *Strand*: There was none but Sir *George Barclay*, Capt. *Charnock*, Sir *William Parkins*, and my Self. Sir *George Barclay* said, He was afraid the Thing was discover'd: I said, if it had, we should not have been in that House at that time. Then says he, Let us go on, and try another Day. Sir *William Parkins* was ask'd, if his Horses were come to Town? He said, they were to come that Night. I said, two of mine would not be fit for Service: He told me, if he had known that, he could have brought more Horses out of the Country; but he would send to Mr. *Lewis*, Gentleman of the Horse to the Earl of *Feversham*, and he could help me to two more. And in the Morning, he sent me a Note for two, and sent me Word, Mr. *Lewis* could help me to two or three others: That three were saddled, and one was accoutred with Holsters and Pistols, but the other two had only Saddles. I did not see Sir *William Parkins* on *Saturday* the 22d; but I met some of my Friends, who were to go along with me upon this Enterprize, and we had first Notice that the Guards were gone abroad, and that the King would go; at which all were very glad. But when we had Notice the King did not go, we were afraid the Thing was discover'd; and I went out of Town, and did not see any of them afterwards, till they were taken.

Att. Gen. What Method was you to have taken, in the execution of this Design?

Porter. The Method agreed on, was this, *Rookwood*, that came from *France*, was to Command one Party; Capt. *Charnock* and my Self, were to Command another Party, to Attack the Guards; and Sir *George Barclay* was to have four Men out of each Party, to Attack the Coach, while we attack'd the Guards.

Att. Gen.

Att. Gen. Have you heard any thing from Sir William Parkins, of his having a Commission from King James?

Porter. Capt. Charnock ask'd him to be one in the Assassination, and he said he could not, he had a Regiment to look after.

Furyman. I desire he may be ask'd, Whether, at any of those Meetings, there was any Discourse of the Assassination, before Sir William Parkins?

Porter. Yes, He was at all the Meetings and Consultations.

Furyman. Did Sir William Parkins discourse of it himself? and, What did he say?

Porter. I cannot say exactly what he did say in particulaar; only he agreed to it, and was to furnish five Horses for it: And said, It was necessary to be done, for it would bring the King in more easily, though he could not ingage himself personally in it, because he had other Business; he was to look after his Regiment.

Abraham Sweet was Sworn.

Att. Gen. Give an Account what Discourse you had with Sir William Parkins, about King James's returning, and landing with French Forces.

Sweet. About Christmas last, Sir William Parkins did tell me, that he did expect King James's Landing; and, he said, his own Troop was compos'd of old Soldiers: And, he said, he had bought Thirty Saddles; and that he had the King's Word for his Landing.

Sweet's Evidence concerning the Prisoner's preparations.
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Att. Gen. What Discourse had you about a Journey, Sir William was to take?

Sweet. He said he was to go into *Leicestershire*, to meet several Gentlemen, and he did go; and after he came back, he said, he had met his Friends, and all was well: And that the West was as much inclin'd to the King's Interest, as the North: And that a Lord's Brother was concern'd.

Att. Gen. What Orders had you to come to Town in February?

Sweet. Sir William sent me a Letter about the 11th of February, to come to Town; and I came up the next Day, to his Lodgings in *Norfolk-street*: And he told me, the Business he had design'd for me,

me, he did not think fit I should do, because of my Family. And when I went into the Country again, he order'd me to go to his House, and send up three of the strongest Horses. This was on *Wednesday* the 12th of *February*; and he told me, if I had not a Letter from him the *Friday* following, I should come to Town again. I did come to Town again, and then he ask'd me, If I had made Provision for my Family? I said, No. Then he ask'd me, Why I came to Town? and told me, I might go back again on the Morrow Morning. I came to his Lodgings again the next Morning, which was *Saturday*, but he was not within; but there I met one *Chambers*, and one Mr. *Lee*, whom I had seen there the Night before. *Chambers* told me he had been at *Kensington*; I enquir'd, What News there? And he told me, *William* kept as close as a Fox. And shew'd me his Wounds, which, he said, he receiv'd at the *Boyne*: And said, those Wounds wanted Revenge. I Din'd, that Day, with Sir *William Parkins*, and Mr. *Charnock*, and *Chambers*; and one or two more I did not know.

Parkins. Did I tell you, Mr. *Sweet*, that I had a Troop of Horse?

Sweet. No, Your Words were, your own Troop was compos'd of old Soldiers: And you said, There were some Gentlemen that were Captains, and old Officers, that would be Volunteers under you.

Parkins. Pray where were these Words spoken?

Sweet. Either at your House in *Hertfordshire*, or in the Garden there, or some where about the House; I can't tell directly.

Parkins. Then I ask your Lordships Judgment, Whether Words spoken in *Hertfordshire*, can be Evidence of a Treason acted in *Middlesex*?

L. C. J. It is true, you being Indicted in *Middlesex*, some Evidence must be given of Things done in *Middlesex*; as there is, viz. Your meeting at Mrs. *Mountjoy's*, &c. where were several Consults, which are Overt Acts of the same Treason. And if Treason be committed in several Counties, the Party may be Indicted in any one; and the Evidence may be given of Facts done in all. Besides, you had Discourse with *Sweet* in *Norfolk-street*,

Page 78.
Evidence given of Treason out of the County where the Prisoner was Indicted.

street, and that is in *Middlesex*. You told him, you had thought of a Business for him, but you would not ingage him in it, because of his Family.

Parkins. Mr. Sweet, Did I tell you what you were to do?

Sweet. No, Sir, you did not.

Then *Eubank*, Groom to Sir *William Parkins*, was Sworn.

Att. Gen. Pray give an Account of the Journey you took with your Master?

Eubank. In *January*, on a *Thursday*, we set out from my Master's House, and lay that Night at *Stony-Stratford*; and the next Day we came to *Leicester*, where we staid till *Sunday* Morning: One *Capt. Scudamore* went with us.

Eubank's Evidence of the Prisoner's Journey to Leicester.

Att. Gen. What Company came to your Master at *Leicester*?

Eubank. There was one that said his Name was *Yarborough*, who came out of *Yorkshire*; and a Gentleman in black Cloaths, who came with him; he said he was a Minister. There were a great many other People that went up and down Stairs, it being Market-Day; but whether they went to my Master, or no, I can't tell; I was busy with my Horses. On *Sunday* we came back to *Brickhill*; and the next Day, being *Monday*, we came to *Busby* about Eight in the Evening, with *Capt. Scudamore*.

Att. Gen. After this, Did you bring up any Horses to the *George Inn* to your Master?

Eubank. On *Valentine's Day*, which fell on a *Friday*, I brought up three Horses to the *George Inn*, and went and acquainted my Master: He said, he thought he should go Home that Night. Afterwards, he said, he thought he should go on *Saturday*, but he did not go down till *Monday*; and one *Holmes*, a fat thick Man, went with him. Upon the *Friday* following, we came to Town again, with four Horses furnish'd with Pistols: My Master came up with them, and *Holmes*, and I, and another Servant. The next Morning I was sent to *Kensington*, with a Note for one *Brown*, who lay at a Man's House near the King's Gate, and belong'd to the Kitchen. I was to tell him, I came from a Gentleman, that lay at the Confectioners in *Holbourn*, over against *Gray's Inn*. His Answer was,

Of his bringing Horses to Town, against the time of the intended Assassination.
Page 79.

Sir George Barclay describ'd.

was, That he had no Business he need to send, but writ in my Almanack, that he would come to Town betwixt Nine and Ten a Clock: And I went back, and shew'd it to the Gentleman at the Confectioners. He was a lusty Man, of a middle Age, with a great Nose, and a black Wig, and speaks broad *Scotch*: He was a swarthy colour'd Man, and had a wide Mouth.

Att. Gen. What did that Gentleman say to you?

Eubank. He bid me tell my Master, he would be in his Chamber, ready for him, which I did; and my Master bid me go to the Inn, and make ready the Horses, for he design'd to go home by and by: But he did not come to the Inn, till about Three or Four in the Afternoon.

Sol. Gen. Pray, Who came with Sir William Parkins?

Eubank. One *Lewis*, who, they said, was my Lord *Feversham's* Gentleman. Mr. *Lewis* ask'd me, How many Saddles had been sent in there? I said, but two. He said, there must be a mistake, because my Master said, he had but Twenty Two, and he reckon'd there should be Twenty Four in all.

Att. Gen. Who were the two Saddles for?

Eubank. For two other Gentlemen's Horses, that stood at that place.

Att. Gen. What time did you go out of Town?

Evidence of
burying Arms
at the Prisoner's House
in Warwickshire.

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Eubank. About Four a Clock in the Afternoon. And on *Monday* I receiv'd a Letter from my Master, to go to my Master's House in *Warwickshire*, to one *Richard Evans*, his Servant, to whom he sent a Letter; and I came thither on *Tuesday*, about Four a Clock. When *Evans* had read the Letter, we went to fetch some Boxes, my Master had order'd to be brought home: They were at a Tradesman's about two Miles off, and we had a Team to bring them; there were about six Boxes. And when we return'd, which was about Ten or Eleven at Night, they were buried in the Garden: I saw the Earth thrown upon them; I don't know what was in them, but *Evans* told me they were choice Goods.

Parkins.

Parkins. You say one *Holmes* went out of Town with me; Pray what *Holmes* was it?

Eubank. It is fat Mr. *Holmes*, who lives at the *Goldon Key* in *Holbourn*.

Parkins. I observe this to distinguish it, that it was not, as Mr. *Attorney* open'd it, Major *Holmes*, that is in the Proclamation.

Thomas Hipwell was Sworn.

Hipwell. Upon *Ash-Wednesday*, about Seven in the Evening, one *Richard Evans*, Sir *William Parkins's* Man, and one *Wetston*, a Tenant to Sir *William*, brought a Waggon to my Master *Haywood's*; and about a quarter of an Hour before the Team came, my Master told me, Sir *William Parkins's* Men were to come to fetch some Bedding, and other Goods; and order'd me, when they knock'd at the Gate, to let them in; and I did so.

Hipwell's Evidence of removing the Arms from *Haywood's*, to the Prisoner's House.

Att. Gen. Did they carry away any Goods, and what were they?

Hipwell. They were at first in three Boxes, and Sir *William Parkins's* Servant knock'd off the outside Lining, and took out of two Boxes, three Boxes apiece, and two out of another: I think there were Eight in all. Sir *William Parkins's* Man, and the Tenant, carried them to the Waggon; and I lighted them with a Lanthorn, according to my Master's Order; and they drove away about Nine or Ten a Clock at Night.

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Mr. Haywood was Sworn.

Att. Gen. Give an Account how Sir *William Parkins's* Goods came to your House?

Haywood. Sir *William Parkins's* Man came to me about *Michaelmas* last, with a Letter from one Mr. *Charnock*, to desire me to lodge some of Sir *William's* Goods at my House; because he was taking his Servants away from his House. They were nail'd in three pretty big Chests; and there was a Bed and Bedding, and a piece of Tapestry or two.

Haywood, to the same effect.

Att. Gen. How are you related to Mr. *Charnock*, who sent the Letter?

Haywood. I married his Sister; and I took the Goods into my Custody, upon his Account. And when I came to *London*, about the 17th of *February* last;

last; I went to Mr. *Charnock's* Lodgings, and ask'd him, When Sir *William* would fetch away his Goods? And he afterwards sent for me, when Sir *William Parkins* was at his Lodgings; and Sir *William* told me, he would take them away the first opportunity.

Att. Gen. Now tell us who came for those Goods?

Haywood. Upon *Ash-Wednesday*, about Seven in the Evening, Sir *William Parkins's* Man came to me, and desir'd to have his Master's Goods away: I told him it was an unseasonable Time; but he said, the Waggon was coming, and desir'd I would give him leave to take them, which I did; and lent them a Horse, because they had but two, to draw the Waggon.

Whetstone, Sir *William's* Tenant, Sworn.

Att. Gen. Give an Account what happen'd, when you went with *Evans* to *Haywood's* House?

Whetstone to
the same.

Whetstone. Sir *William's* Man desir'd me to go to *Haywood's*, to fetch some Bedding, and odd Things: He went before, and met me again, about half a Mile from the House; and told me, I must stay, and not come to the House till it was Night. And at Night we went to the House, and loaded the Waggon with Boxes and Bedding that was there. There might be seven or eight Boxes; and we carried them to Sir *William Parkins's* House; and they were put into the Ground by the Wall-side, where they were found. I saw them dug up again, and they prov'd to be Arms.

Thomas Watts, the Constable, Sworn.

The Consta-
ble's Evidence,
who seiz'd
them.

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Watts. I search'd Sir *William Parkins's* House, and in a Border, by the Wall in the Garden, I found some Arms: *Viz.* Four Dozen of broad two edg'd Swords, without Hilt; (but there was a Box of Hilt, that I suppose was prepar'd for them) Thirty Two Carbines, and Twenty Five Brace of Pistols. I carried the Boxes to my House, and broke them open there.

Freeman, the Hostler, Sworn.

Att. Gen. Give an Account what Horses of Sir *William Parkins's* were kept at the *George*?

Freeman.

Freeman. About *February* last, he had sometimes three Horses came in, sometimes Four, the most that ever he had was Five.

Att. Gen. When had he Five?

Freeman. It was the Week before the Plot broke out: They came in on a *Friday* Night, four with Holsters and small Pistols, and a led Mare with a Portmanteau: And in a Horse-Cloth, wrapp'd up, there was one or two pair of Jack-Boots; and, I think, a Bridle or two. They went away again on *Saturday* in the Afternoon.

Att. Gen. Did you observe any Persons come there on *Saturday* Morning?

Freeman. There were two Men that rid out between Nine and Ten, and came in again between Twelve and One; and they had rid pretty hard, for their Horses were in a sweat.

Att. Gen. Can you remember any Horses came up the Week before?

Freeman. There were some, but how many I can't remember; they rarely staid above a Night. There were three other very good Horses at our House a Week; I don't know whose they were, but Sir *William's* Groom told me, he had Orders to see them fed. And there was a Roan-Gelding brought by a Porter from *Somerset-House*; and a very fat Man mounted him, and rid out with Sir *William*. The Horse was about fourteen Hands high, and so was Sir *William's* Bay Gelding; there were no great siz'd Horses among them.

Parkins. There's your mighty Horse for Service; And have you not known these Horses to have been mine a great while?

Freeman. Yes, I have known them all to be yours a great while, (except the Roan) they were frequently there last Summer.

Turton, of the *George*, call'd.

Turton. The last time Sir *William Parkins* came to the *George*, was the *Friday* before the Plot broke out; he came with four or five Horses, and gave order to his Groom, to get the Horses ready against *Saturday* Morning. However, he did not go out with all the Horses; but two Gentlemen rid out with two of them, and return'd in about two or

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Turton's Evidence to the same purpose.

three Hours : They had rid hard, for the Horses were in a sweat. In the Afternoon, they all went out of Town ; and said, we might expect them the *Sunday* or *Monday* following : And Mr. *Lewis*, Gentleman of the Horse to my Lord *Feversham*, came to enquire for them, but they did not return. About a Week before this, Sir *William* had three Horses brought to Town ; he has us'd the Inn these four or five Years.

Att. Gen. The Horses that came up on the last *Friday*, How were they accoutred ?

Turton. Two or three of them had Holsters ; and there were four or five pair of Horse Pistols.

Parkins. Did not I always ride with Pistols ?

Turton. You seldom came without two or three pair, when you came with Servants.

Parkins. What siz'd Horses had we ?

Turton. I believe there was never a Horse that exceeded Fourteen Hands and a half ? and some were under Fourteen.

Att. Gen. Did you ever see him come with so many Horses before ?

Turton. I have seen more when I liv'd at the *Sword* and *Buckler*, and he us'd to Inn there.

Att. Gen. Did you observe any other Horses that stood there ?

Turton. There were two pretty fizable Horses, larger than any of Sir *William's*, but whose they were, I can't tell : One paid me for them, and took them away.

L. C. J. Sir *William Parkins*, the King's Council have done ; now is the time to make your Defence.

The Prisoner's
Defence.

Parkins. I rely wholly upon your Lordship, to repeat the Evidence to the Jury as it is, and no otherwise. But I do not observe, That as to the Assassination, there is more than one Witness, and that is Capt. *Porter* : And Capt. *Porter* declares, I was to have no hand in it, only I was to furnish five Horses ; and, accidentally, I was at some Meetings. But he does not declare I was to do any thing in particular.

L. C. J.

L. C. J. Yes; you agreed to the several Resolutions, of assassinating the King; and said that it was necessary, and fit to take him off.

Parkins. Still that is but One Witness, and the Law requires Two.

L. C. J. Not to every Overt Act, there is no Law that says so: And you told *Sweet* that your Troop consisted of old Soldiers, and you had bought Thirty Sables, and that you were to go into *Leicestershire*; and accordingly you did go: And on your Return you gave an Account, that all was well; and the *West* was as well enclined to King *James's* Interest as the *North*.

Parkins. He did not say they were well inclin'd to King *James's* Interest.

Sweet was set up again.

Sweet. He always named it the King's Interest, and did not name King *James*; but I always took it to be King *James* he meant.

Mr. Comper. When he spoke of the present King, By what Name did he use to speak of him?

Sweet. He sometimes call'd him the Prince of *Orange*, and I have heard him call him King *William*, and the Little Gentleman.

L. C. J. I would observe to you, That when you came out of *Leicestershire*, you talk'd how well dispos'd they were to the King's Interest: Now, Were you employed by King *William* to see how the Gentlemen stood affected to him.

Parkins. No, Nor by King *James* neither.

L. C. J. Why then should you concern your self for the King's Friends in the *West* and *North*?

Att. Gen. When was it Sir *William Parkins* spoke about the King's Landing?

Sweet. About *Christmas* last he said, he believ'd he would Land.

Sol. Gen. This being long after our King was return'd, it could mean no other King but King *James*.

L. C. J. There is another Thing I would observe Sir *William*, Why did you send your Man to *Kensington*, to one *Brown*? Who is that *Brown*? And what was the Man that Lodg'd at the Confectioner's in *Holborn*?

Parkins. I cannot tell who it was: I know neither *Brown* nor the other Man; but I sent my Man, at the Request of Mr. *Charnock*, who Lodged with me.

L. C. J. But he was bid by the Man, who Lodged at the Confectioners, to tell his Master, that he would stay within for him.

Parkins. That might be Mr. *Charnock*, for he was his Servant once.

L. C. J. But he says, he carried the Message to you; and you receiv'd it. Well, Have you any more to say?

Parkins. My Lord, I think there is but One positive Witness of any one Overt Act; and there ought to be Two positive Witnesses to each Overt Act.

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L. C. J. No, There ought to be Two Witnesses to each Specie of Treason; that's all.

Parkins. There ought to be Two Witnesses to both these Parts of the Treason.

L. C. J. I must tell you Sir *William*, If any Person does design and contrive that the Realm should be invaded, or the King depos'd; that conspiring to invade the Realm, or depose the King, are Overt Acts of High Treason, within the Statute of 25 *Edw. 3*: And the same Species of Treason as designing to assassinate him is. It is compassing, designing, imagining his Death and Destruction. Now, the Question is, Whether there is not another Witness, besides Capt. *Porter*, to prove another Overt Act of this Design.

Parkins. I don't find there is; for all the rest is only Discourse.

L. C. J. Do you think providing Arms for that Purpose is only Discourse?

Parkins. The Witnesses don't say for what Purpose the Arms were bought.

L. C. J. Nor do you tell us of any other Purpose.

Parkins. My Lord, I did not buy them. If I had had Liberty to have sent down for Witnesses, I could have proved that these Arms were in Boxes, all rusty, in my House, when I first came to it.

L. C. J.

L. C. J. But, Why were they buried just at the Time when the Plot broke out?

Parkins. I can't tell how to help it, if they will make an ill Interpretation.

L. C. J. What Interpretation would you have us make?

Parkins. It is very easy to imagine People don't care to be found with Arms at such a Time; but however, the having of Arms is no Treason.

Att. Gen. And then the Horses coming to Town just at such a Time, and the Saddles.

Parkins. I have not bought a Horse this Two Years: And I travell'd in no other Manner than I us'd to do. The Groom tells you, I us'd to come to Town with Three or Four Horses always. I never kept less than Six or Seven this Twenty Years; sometimes a great many more, and they were very little Horses, Padds, no way fit for the Service they are presum'd to be for: I hope my Lord, as to the Assassination, I am clear. Perhaps the World may imagine, I have had some Inclinations to King James's Service, and perhaps they may not think amiss; but I never did any thing, nor had an Opportunity to do.

L. C. J. God be thanked you had no Opportunity.

Parkins. I hope my Life shall not be taken away without Proof; it would better please the King that I should be acquitted, than to let me be found guilty upon slight Grounds and Imaginations, of which little or nothing can be made; I hope my Lord, you will not strain the Law to take away my Life.

L. C. J. If there be One Witness to One Overt Act, and another Witness to another Overt Act of the same Species of Treason, that is all the Law requires.

Parkins. Levying War is One Species of Treason, and Assassination is another.

L. C. J. Your Design, Originally, was the Restoring of King James; and in order to that, the Dethroning of King William: One Way of effecting your Design was by Assassination, the other by Invasion, or by Force. If the Assassination

One Witness to One Overt Act, and another, to another, is sufficient.

on be prov'd but by one Witness, the Design of Dethroning the King is prov'd by Two. Have you any more to say Sir; if you have, pray speak it.

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Parkins. I have no more, I submit it to your Lordship; I think there is but One Witness, all the other is but Conjecture and Nonsense.

L. C. J. I have told you my Opinion.

Parkins. Besides, Your Lordship has known me this many Years, and you know that my Education was not to War but the Gown; and your Lordship knows how peaceable I have liv'd: And now in my Old Age, my Lord, I am grown lame, and have lost the Use of my Hands by the Gout; and am scarce able to go on my Feet: Therefore, it cannot be thought probable I should engage in such a Business as this.

L. C. J. I have known you heretofore Sir *William*, while you kept your Profession and your Gown; you have had my Opinion concerning the Number of Witnesses, I suppose my Lord and Brother will declare theirs.

Promoting an
Insurrection
or Invasion,
or an Assassi-
nation of the
Prince, are
same Species
of Treason,
because any
of them
tend to his
Destruction.

Then my Lord Chief Justice *Treby* declar'd his Opinion, That, although there was but One Witness to the Assassination, the Treason of compassing and imagining the King's Death, might be made Evident by other Overt Acts; and that conspiring with a foreign Prince, to invade the Realm, providing Arms to join with Invaders, and make an Insurrection against the King, are Overt Acts of conspiring his Death; for he that would cause an Invasion or Insurrection against the King's Person, cannot but be presum'd to design his Ruin and Murder: Therefore Sir *William*, your providing Arms and a Troop, are Evidences, and Overt Acts of your compassing and imagining the King's Death; and so is your going up and down and meeting People in order to Rise, if that were your Business in *Leicestershire*: But laying aside the Business of *Leicestershire* and your providing Arms, you acknowledge you had a Troop of old Soldiers.

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Parkins. He only tells you that a Troop would be compos'd of old Soldiers: Pray Mr. *Sweet*, my
Life

Life is at Stake, Did I say it did consist, or it would consist?

Sweet. He said, His Troop was compos'd all of old Soldiers.

Parkins. But does it appear by any Evidence, that I had a Troop? If I had, who are they? None of these Men do appear. Suppose I should tell him a Lie, or make some Braggs, Is this Treason? Here is no Person prov'd to be Listed or Named.

L. C. J. But Arms were found in your House for a Troop.

Parkins. But I affirm to your Lordship, and if you would give me but One Day's Time, I would prove, that they were at my House in *Warwickshire* when I first came down thither; and I'll fully make it out to your Satisfaction or I'll be Crucified.

Then Mr. Justice *Rokeby* deliver'd his Opinion, That One Witness to One Overt Act, and another to another Overt Act of the same Species of Treason was sufficient. That the Treason was the compassing the King's Death, and the Two Overt Acts laid in the Indictment were, First, the Assassination, and Secondly, the bringing in a Foreign Force, and preparing Horses and Arms to meet that Foreign Force here; and that either of these were a compassing the King's Death.

Parkins. My Lord, I hope I shall not be interpreted out of my Life; I desire the Statute may be read.

Just. Rokeby. What Statute do you mean?

Par. The 25 *Edw.* 3. and the New Statute too.

The Statute 25 *Edw.* 3. was Read.

Park. There is nothing of Two Witnesses there.

L. C. J. No, but there is another Statute of the 5 *Edw.* 6. *Cap.* 11. that may be more for your Advantage; will you have that read.

That Statute was read to these Words, *Unless without Tryal he shall confess the same.* Page 82.

Parkins. My Lord, I infer from hence there ought to be Two Witnesses to each Overt Act. What are deemed the

L. C. J. No, no, for that very last Act, that is to take Effect in a few Days, declares it is sufficient, same Species of Treason.

cient, if there be One to One Overt Act, and another to another, of the same Head or Species of Treason: Now, deposing the King and assassinating him, and preparing to raise an Army against him, or to excite an Invasion are but one sort of Treason.

Parkins. But rising in Arms, and Assassination, are as different Things as can be in the World.

Just. Rokeby. It is the imagining the Death of the King, that is the Treason.

Parkins. You may say every thing else is so. I desire the whole Statute may be read.

L. C. J. If by Overt Act it be prov'd you design'd his Deposition, that is an Overt Act to prove your Design of his Death.

Parkins. They are very different Things; Death and Depositions. We have seen a King depos'd, and yet he is alive.

The New Act was Read.

Parkins. Here is a beneficial Law made, which, if my Tryal had been put off a few Days, I could have had the Benefit of.

L. C. J. It would have been the same thing as to this matter, for this Act declares the same thing, as to Two Witnesses.

Parkins. And then I could have had Witnesses to have taken off a great Part of this Evidence, which turns upon this matter of *Sweet*, who is not a good Evidence; having sworn what cannot be true: As to my saying I had the King's Word for his Landing; it is impossible I should speak from hence to *France*.

L. C. J. You might have been over with him; I believe a great many others have: And it's prov'd *Mr. Charnock* went over.

Just. Rokeby. It might come by a Letter, or a particular Messenger.

Parkins. Yes, if there was any such Authority, it is true. But he has manifestly contradicted himself; and *Capt. Porter* swears for his own Life, and I must leave it to you, whether they are to be believed.

Then *Mr. Solicitor* and *Mr. Comper* having sum'd up the Evidence, my Lord Chief Justice also repeated

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peated the principal Part of the Evidence, and proceeded to direct the Jury as to matter of Law.

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“ And besides those Points, the Court had before
 “ deliver’d there Opinions in, He takes Notice of
 “ an Objection of Sir *William Parkins*, That Sweet
 “ does not prove any Overt Act, but only Words:
 “ And Words says he, are not Treason. To this
 “ the Chief Justice answers, They were to
 “ consider the Force of Sweet’s Evidence, who re-
 “ lates the Discourse Sir *William Parkins* had with
 “ him about *Christmas* last; of the King’s com-
 “ ing, of his Saddles, and of his Troop consisting
 “ of old Soldiers; and Volunteers that were old
 “ Officers: Now, these are Words that relate to
 “ Acts and Things; you hear he had a great
 “ Quantity of Arms beyond what he, as a private
 “ Man, could have Occasion for, or would use.
 “ He does not give any Account what he was to
 “ do with those Arms, or to what Purpose he
 “ should keep them; nor why he caus’d them to
 “ be remov’d in the Night, after they had lain pri-
 “ vately in *Haywood’s* House, and caus’d them to
 “ be carried back to his own House, and buried
 “ them in the Ground, and at such a Time when
 “ there was a Plot; and after the Plot was disco-
 “ ver’d, and a Proclamation out for his own Appre-
 “ hension: Sir *William Parkins’s* Discourse with
 “ Sweet, of King *James’s* coming, and his Troop
 “ consisting of such Men plainly shews what those
 “ Arms were for; and Mens Discourses and their
 “ Words, explain their Actions: And an Action,
 “ indifferent in itself, may be so explained by
 “ Words, that it will be unlawful. It is lawful
 “ for a Man to buy a Pistol, but if it can be plain-
 “ ly prov’d from his Words or Speeches, that the
 “ Design of buying it, was to use it against the
 “ Person or Life of the King, that will be an O-
 “ vert Act. Now, when Sir *William Parkins* said,
 “ The late King would come, and that he had a
 “ Troop which consisted of such Soldiers; then
 “ these Arms being found in that Manner, I must
 “ leave it to the Consideration of the Jury, Whe-
 “ ther it is not a Proof for what Purpose he did
 “ provide them? Especially, since he gives no
 “ Account,

Page 95.
 The Chief
 Justices Di-
 rection to the
 Jury, as to
 treasonable
 Words.

“ Account, what Occasion he had for them. He
 “ says indeed, he found them in the House Two
 “ Years ago; but how probable that is, the Jury
 “ should consider.

“ That as to Sir *William Parkins*’s going in that
 “ private and hasty Manner into *Leicestershire*,
 “ and of his Return; telling *Sweet* that ‘all was
 “ well: And the *West* was as well inclin’d to the
 “ King’s Interest as the *North*. He left them to
 “ consider from the Circumstances, Whether by
 “ the *King* were not meant King *James*? And if
 “ they did, that would be another Evidence to
 “ convince them that he was guilty.

He is convi-
 cted.

The Jury withdrew, and within half an Hour
 brought the Prisoner in *Guilty*.

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 Conspiring to
 levy War or
 execute an In-
 vasion, is
 Treason,
 tho’ no War
 be actually le-
 vy’d.

While the Jury were withdrawn to consider of
 their Verdict, Sir *John Friend* was brought to
 the Bar, in order to his being call’d to Judgment.
 He mov’d in arrest of Judgment, That he was
 convicted by One Witness, for that the other
 Witness, only swore to a Conspiracy to levy War:
 And conspiring to levy War, he apprehended,
 was not Treason; unless War were actually le-
 vy’d. And desir’d his Council might be heard as
 to that Point.

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Court. That which you move is not in arrest
 of Judgment, but arraigns the Verdict; and,
 We cannot hear Council but upon a Matter that
 arises upon the Record itself; that is the Indict-
 ment: Besides, it was told you at your Tryal,
 We did all agree, that a Conspiracy to levy War,
 to depose the King, is Treason: Or a Conspiracy
 to invade the Realm is Treason.

Sentence pas-
 sed on Sir
John Friend
 and Sir *Wil-*
liam Parkins.

Then it being demanded of Sir *John Friend* and
 Sir *William Parkins*, respectively, What they
 could say why the Court should not proceed to
 Judgment; and they were made to kneel: And
 rising up again, they said they had nothing further
 to offer: Whereupon, Sentence was pass’d upon
 them as Traytors.

The

The Arraignment of AMBROSE ROOK-
WOOD, &c. Die Martis 14 Aprilis.
8 W. 3. 1696.

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THE Prisoner was indicted of High Treason, The Indict-
in compassing and imagining the Death of ment was for
the King: Endeavouring to subvert the Govern- High Trea-
ment Established: And to subject the People of son, in ima-
this Kingdom, to the Dominion and Slavery of gining the
the French King. And to this End the Indictment Death of the
sets forth, " That the Prisoner, together with King; and to
" Robert Lowick, Charles Cranburn, and Christo- that End,
" pher Knightley; and divers others false Tray- consulting
" tors, to the Jurors unknown: The 10th Day and agreeing
" of February, in the Seventh Year of the Reign to attack the
" of the King that now is; at the Parish of St. Guards, and
" Paul's Covent-Garden, in the County of Mid- assassinate His
" dlesex; and divers other Days and Times, as Majesty.
" well before as after, there, and elsewhere in
" the said County, did traiterously consult and
" agree to assassinate His Majesty: And to ac-
" complish the same, that Forty Horsmen, or
" thereabouts, whereof the Prisoner was to be
" one, should lie in Ambush, and set upon the
" King in his Coach, at his Return home: That
" One Party of them were to attack the Guards,
" while the other should set upon the King, and
" murder him in his Coach: And that the Priso-
" ner at the Bar, and his Accomplices, did buy
" and procure Horses and Arms, in order to put
" this, their execrable Design, in Execution.
" That the aforesaid Christopher Knightley, toge-
" ther with one Edward King, lately convicted;
" by the Consent of the said other Traytors,
" went to view the Situation of the Ground,
" where the Assassination should have been com-
" mitted: And that the Ground being so viewed,
" the said Knightley and King, did, the Day and
" Year above, communicate their Observations
" thereon to the said other Traytors: And that
" the said Charles Cranburn, in order the more
" readily

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“ readily to commit the said intended Assassinati-
 “ on ; did bring and carry, between the said Tray-
 “ tors and Conspirators, a List of the Names
 “ of divers Men who were designed and appoint-
 “ ed to perpetrate the same. And that all this
 “ was contrary to the Duty and Allegiance the said
 “ Traytors owed to their Sovereign ; and against
 “ the King's Peace, his Crown and Dignity, &c.

None permit-
 ted to be in
 private with
 the Prisoner
 but his Coun-
 cil.

To which Indictment the Prisoner pleaded *Not Guilty*. He desir'd he might have Pen, Ink, and Paper, and his Brother, &c. to come to him ; which was granted. But, the Keeper was direct- ed that none should be admitted to be in private with him but his Council.

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Then the Keeper was order'd to take away the Prisoner, and bring him to the Bar again that Day Seven-night : The Court having first consulted among themselves, about the Precept for the Pe- tit Jury, upon a late Act of Parliament, which appoints the Jury to be summoned Six Days be- fore they appear to try any Cause : And upon the last Act, for regulating Tryals in Cases of High Treason : Which requires, That the Prisoner shall have a Copy of the Pannel duly returned, at least, Two Days before his Tryal.

Tho' the In-
 dictment
 were laid a-
 gainst Four
 of them joint-
 ly, the Court
 order'd them
 to be try'd se-
 parately.

The Court
 signed the
 Precepts for
 the Petit Ju-
 ry, and ad-
 journed for a
 Week.

And, although the Indictment were laid against *Lowick Rookwood*, and *Cranburn* jointly, yet the Court resolved there should go Three several *Ve- nires* for the Petit Jury, returnable that Day Se- ven-night ; for they said it was a several Offence in every one of them, and if they should sever in their Challenges it might be troublesome. So the Court adjourned for an Hour, while the Precepts for the Jury were preparing ; and then met, and sign'd the Precepts ; and adjourned the Sessions of *Oyer and Terminer* 'till that Day Seven-night, at Seven in the Morning.

The Tryal of *The Tryal of Ambrose Rookwood, the 21st of April. 8 W. 3. 1696.*

Sir *Bartholomew Shower*, after making an Apo- logy for his being of Council for the Prisoner in this Cause, objected, That the Prisoner could not be

be Try'd that Day, there being a Clause in a late Act which says, *The Prisoner shall have a Copy of the Pannel of the Jurors, who are to try him, duly returned by the Sheriff, Two Days before the Tryal.* And he insisted, that the Words *duly return'd*, must be antecedent to the having a Copy; or else he could be said to have a Copy of the Pannel duly return'd: That they had indeed, a Copy of the Array of the Pannel deliver'd them, but that was not a Copy of the Pannel of the Jurors return'd; for it was no Return 'till it came into Court.

Page 101.
It answers the Intent of the late Act, if the Prisoner have a Copy of the Pannel array'd, tho' not returned at the Time it is given the Prisoner.

Mr. *Phipps* insisted on the same Objection, and put this Case: He said the Act likewise requir'd, That the Prisoner should have a Copy of his Indictment Five Days before the Tryal: Suppose then, a Copy of a Bill that is intended to be presented to the Grand Jury, were deliver'd to the Person accused, Five Days before the Grand Jury were to meet; and they afterwards meet and find it; and the Party should be immediately arraigned upon it: This is indeed a true Copy of the Indictment; yet certainly the Intent of the Act is not answered, for it was not a true Copy of the Indictment at the Time it was deliver'd. That he took this Case to be under the same Reason: And that this was not a Pannel duly return'd till now; and by Consequence, they had not that Advantage which that Act intended to give them.

The *Attorney General* answer'd: That the Intent of the Act was, that the Prisoner might know Two Days before the Tryal who were the Jury that were to pass upon him, that he might have an Opportunity to consider how to make his Challenges; and enquire into their Qualifications:

Sir Thomas Trevor.

And that if he had a Copy of the Pannel array'd by the Sheriff; which was afterwards return'd into Court without Variation, the Intent of the Act was well pursued. And that the Words of the Act were not that he should have a Copy of the Pannel *after* it was return'd, but a Copy of the Pannel *duly returned by the Sheriff.*

That if the Pannel was not to be deliver'd 'till after the Return of the Writ, then upon the Return of the Writ, the Jury and the Prisoner must be brought

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No *Habeas Corpora* ever issues in a Tryal for Treason, but the Jury come in upon the *Venire*.

Sir John Hawles.

brought to the Bar and adjourn'd over to a further Day; that in the mean time a Copy might be deliver'd him: Or else, the Jury must not come upon the *Venire facias*, but there must go an *Habeas Corpora*; and the Prisoner be Try'd upon that *Habeas Corpora*. But, that no Instance could be given of a Tryal for Treason, upon a *Habeas Corpora*. And, that if the Parliament had intended to introduce a new Method of Tryal, they would have describ'd and settled what it should be.

Mr. *Sollicitor* said, if this Act were to be taken according to the Words, and not according to the meaning of it, it would be to the Prisoner's Disadvantage: For it provides he shall have a Copy of his Indictment Five Days before his Tryal; and yet it was agreed to be the meaning of the Act, that he should have a Copy of his Indictment Five Days before he is arraign'd; because he might have several Pleas to plead, and Objections to make, before he pleaded the General Issue. That therefore, the Prisoner had had a Copy of his Indictment, Five or Six Days before his Arraignment; and having pursued the meaning of the Act in that Instance, they had likewise done it in this; and let him have a Copy of the Pannel, as the Parliament intended he should. That the Case the Prisoner's Council had put, in Relation to the Copy of an Indictment being deliver'd before the Indictment was found, was not parallel; because it was not deem'd an Indictment till the Jury had found it: That it was not necessary an Indictment should be put into Form for the Jury before they find it; for they were properly to make their own Presentments themselves: And the ancient Practice was, that they only presented the Fact, and the matter was put into Form afterwards by the Court; and that in many Cases it was so at this Day: But as to the arraying of a Pannel, it always was so; and always must be array'd by the Sheriff before the Jury were summoned.

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The Court deliver'd there Resolution, That giving a Copy of the Pannel before the Return, sufficiently satisfied the Words, as well as the Intention of

of the Act: And that no other Construction could be made without great Absurdities.

Sir *Bartholomew Shower* propos'd another Objection; but beginning again to appologize for his being Council in this Cause, the Chief Justice bid him not make Appologies; for that it was as lawful for him to be of Council in this Case, as it was in any other where the Law allow'd Council: And that it was expected he should do his best for those he was assign'd for.

Sir *Bartholomew Shower* apollogizes for being Council in this Case.

Then Sir *Bartholomew* observ'd, they had not had a true Copy of the *whole* Indictment, for that it did not appear before whom it was taken; nor the Time when, or Place where: That indeed *Middlesex* was in the Margin, but it might be before Justices of Peace at the Quarter Sessions, the Monthly Sessions at *Hick's-Hall*, or the *Old Baily*. That no Indictment was ever given in Evidence, or pleaded without the Caption, Style of Court, &c. And that it could not be a true Copy without them.

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The Prisoner's Council objected, they had not a Copy of the whole Indictment.

To this the *Attorney General* answer'd, That the Objection came too late, for by pleading to it they had admitted it to be a true Copy: And of that Opinion were the Court.

Answered, they had admitted it a true Copy by pleading to it.

Clerk of Arraignment. You, the Prisoner, look to your Challenges.

Sir *Bar. Shower.* Mr. *Rookwood*, you are to make your own Challenges.

After the Prisoner had challeng'd Thirty Four peremptorily, a Jury was Sworn.

The Prisoner must make his Challenges himself.

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L. C. J. Mr. *Phipps*, your Objection upon the Indictment slipt my Memory; you said, it might be as well a Copy of the Indictment before it was found, as well as this a Copy of the Pannel before it was return'd. Now that can't be, for an Indictment is not an Indictment 'till it be found; it is only a Writing prepar'd for the Ease of the Jury, and for Expedition: The Jury may alter what they please, or refuse it absolutely. If the Jury, upon Examining the Witnesses, would only present matter of Fact, with Time and Place, the Court may order it to be drawn up in Form,

The Jury are not confin'd to the Form of the Indictment, but may present only the matter of Fact if they will.

without carrying it to the Jury again : And there needs no *Billa vera*, for that is only the Jury's owning what the Court has prepar'd and drawn up for them : But a Pannel is a Pannel when it is array'd, before it is return'd ; and a Copy of the Pannel given before it is return'd, is a Copy of the Pannel return'd, if it be afterwards return'd, as it must.

Mr. *Phipps*. My Lord, when the Bill is found, the Copy that we deliver'd before, is as much a true Copy of the Indictment, as our Copy of the Pannel is a Copy of the Jury returned.

L. C. J. A Pannel is a Pannel when it is array'd ; but a Bill is not an Indictment 'till it be found. Then Proclamation was made for the Witneses to appear, &c. And Mr. *Montague* open'd the Indictment.

Page 108.
No Exceptions can be taken to the Indictment after the Jury is Sworn.

The Council for the Prisoner, mov'd that they might offer their Exceptions to the Indictment before any Evidence given ; according to the Words of the late Act of Parliament.

The Court answer'd they were too late ; they ought to have mov'd this upon the Arraignment, before Plea pleaded ; or at least before the Jury were Sworn, and Charg'd with the Prisoner : For after they are once Charg'd, in Case of Treason, they must give a Verdict ; and either Acquit, or Convict him.

Page 111.

That the Design of the Parliament was, to restrain the Prisoner from moving in Arrest of Judgment, for misspelling, false *Latin*, or little matters of Form, if he did not move it in a proper Time ; having such a Liberty allow'd him, as to have a Copy of the Indictment so many Days before he was compell'd to plead : That although the Words of the Act were *before Evidence given*, it was nevertheless, intended that they should move at such a Time, before Evidence given, as the Law allow'd : And that the Act did not establish any new Method of Tryal.

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Page 113.

However, it was propos'd by the Court to the King's Council, That since it was a new Act of Parliament, and the Prisoner might be led into this Mistake by the Penning of the Act, that they should

should not take Advantage of his having lapsed his Time, but indulge him so far, as to let him offer his Exceptions now.

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To this Mr. *Attorney* consented, provided they would confine themselves to such Heads as were mentioned in that Clause of the Act, which only related to Matters of Form; and not offer any thing to the substantial Part of the Indictment: Which they had still a Liberty of doing in Arrest of Judgment.

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But the Council for the Prisoner refus'd to offer any thing, unless they might urge all their Exceptions together.

Then Mr. *Attorney* open'd the Nature and Course of the Evidence.

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And Mr. *Porter* was call'd to give Evidence.

Page 117.

Sir *Bar. Shower*. We oppose the Swearing Mr. *Porter*: He is not capable of being a Witness, he stands convicted of Felony; and we desire the Record may be read.

One convicted of Felony, and pardoned, may be an Evidence.

Clerk of Arraignment. [*Reads the Record*] This is an Indictment of Murder against *George Porter*, for the killing of Sir *James Hacket*, Knt. Here's the Jury's Verdict, *Quod predictus Georgius Porter est culpabilis de felonica, interfectione predicti Jacobi Hacket; & non Culp.* as to the Murder. Here is a *Curia advisare vult*; and I suppose there was a Pardon afterwards.

One attainted cannot be an Evidence, tho' pardoned, unless the Attainder be reversed.

Capt. *Porter*. I pleaded the King's Pardon.

L. C. J. And there are several Acts of Pardon since.

Clerk of Arraignment. The Indictment was the 8th of December, 36th of King *Charles* the Second.

Sir *Bar. Shower*. He remains unquallified notwithstanding the King's Pardon. There is a Case in 1 *Brownlow* 47. A Man attainted of Felony, cannot be of an Inquest though pardoned; and there is the same Exception to his being a Witness as to his being a Jurymen; for that one ought to stand as clear and unsuspected in respect of his Probity, as the other. In *Dangerfield's* Case at the Tryal of my Lord *Castlemain*, the whole Court were of Opinion, that a Pardon from the

Page 118.

King only, would not make him a good Witness: But if he were burnt in the Hand, that by 18 *Eliz.* amounted to a Statute Pardon, and set him right to all intents and purposes. That the 11 *H. IV.* 41. was cited, where it is held, That one Attainted could not be a Juryman, tho' pardon'd by the King, although he might be a Witness. But Mr. Justice *Jones* said, It was the same Reason, if he were not fit for a Juryman, he were not fit for a Witness. And in 2 *Bulstr.* 154. it was objected, The Witnesses were not legal Witnesses to prove the Suggestion, because they were both Attainted of Felony.

L. C. J. This is quite another Case; here is no Attainder, and here is Pardon upon Pardon by Act of Parliament.

Mr. *Phipps*. As to that, We think the Parliament Pardon is out of the Case; for if the Pardon from the King, be a good Pardon, there is no Guilt for the Act of Pardon to work upon.

Page 119.
A Pardon
from the King,
as beneficial
as a Parlia-
ment Pardon.
And a Parlia-
ment Pardon
does not re-
store the Of-
fender to
Blood &c.
unless the At-
tainer be re-
vers'd, or
there be spe-
cial Words to
restore him.

L. C. J. The very Parliament Pardon comes from the King: The King has a full Power of pardoning, and where he does pardon under the Great Seal, it has the full Effect of a Parliament Pardon. A Pardon before Attainder, prevents all Corruption of Blood: So that though a Man forfeits his Goods by Conviction; yet after a Pardon, he is capable of having new Goods, and shall hold them without any Forfeiture whatsoever: For the Pardon restores him to his former Capacity, and prevents any further Forfeiture. Indeed, If he had been *Attainted*, whereby his Blood was corrupted; no Pardon, whether it were by the King, or by the Parliament, could purge his Blood, without Reversal of the Attainder, by Writ of Error, or Act of Parliament: Or express Words in the Act, to restore Blood. But either Pardon makes *Him* a New Creature, gives *Him* a new Capacity, and makes *Him* to all intents and purposes, from the time of the Pardon, to be *probus & legalis Homo*, and a good Witness. Indeed, this Crime might be objected to his Credit; but is not to be urg'd against his being a Witness.

Then

Then Capt. Porter was Sworn.

Sol. Gen. Give the Court an Account, what you know of this intended Assassination?

Capt. Porter. My Lord, The first Account I had of this Assassination, was from Mr. Charnock; who brought Sir George Barclay and Major Holmes to my Lodging in Norfolk street, when I was Ill of the Gout. Sir George did not then particularly acquaint me with the Business, but said, he would leave it to Mr. Charnock to tell me what it was.

After that, we had several Meetings, at which the Prisoner at the Bar was present; particularly, at the *Globe* in *Hatton-Garden*, where we consulted the best Means to Assassinate the King, as he came from *Richmond*. Some were of Opinion, that it was best to be done on the other side the Water: Others, that it should be done on this Side, by a Party of Men on Horse-back. Upon this difference of Opinion, there were Persons appointed to go and view both Places: I was appointed for one, to go with Capt. Knightley; and Mr. King went along with me, to view the Ground on both sides. And when we came back, we gave an Account to Sir George Barclay, and those that sent us. And upon our Report, Sir George Barclay's Mind was chang'd; who was for the other side the Water before: And he agreed to do it in the Lane, that leads from *Turnham Green* to *Brentford*. Afterwards there was a Meeting at the *Globe* in *Hatton-Garden*; and there it was agreed, that the King should be Attack'd on Saturday the 15th of February, by Sir George Barclay, and his Party. And Mr. Rookwood, the Prisoner at the Bar, was to Command a Party of Men that came over from France, who were to assault the Guards on one side, and I, and Mr. Charnock, were to set upon the Guards on the other side. Sir George Barclay, with four Men out of each Party, was to attack the King in his Coach; and to kill him, and all that were in it. There were at this Meeting, Sir George Barclay, Capt. Charnock, Sir William Parkins, my Self, Major Holmes, Cap. Rookwood, and Cap. King.

L. C. J. Where was this?

Capt.

Capt. Porter. At the *Globe Tavern* in *Hatton-Garden*.— Upon *Saturday Morning*, the 15th, We having two orderly Men that lay at *Kensington* to give Intelligence: *Durance*, one of them, came to my Lodgings in *Little Rider Street*, at *St. James's*, and told me, the *Advanc'd Guards* were gone out; and the *King's Kitchen* was gone, and all was preparing for the *King's* going abroad. And that there went a great many *Noblemen* and *Gentlemen* a Horse back with him; and therefore, he thought, there would be no Opportunity of effecting the Thing. I said, that was no Reason for putting it off; because when the Sport was over, all the Company used to go away, and the *King* came only in his Coach, with the Guards. He said, he would give *Sir George Barclay* an Account of it; and he came back with *Sir George Barclay*, and *Mr. Rookwood*, to my Lodgings. And upon repeating that Objection, and my giving the same Answer; it was agreed, if the *King* had gone out that Day, to have put the Design in execution. The Prisoner was there when it was agreed upon; but I cannot say I saw him at any Meeting after that.

Sir B. Shower. When was that first Meeting at the *Globe Tavern*?

Porter. It was one Day that Week, before the 15th; but I can't tell what Day.

Sir B. Shower. He says, it was agreed so and so; I desire to know what Words *Mr. Rookwood* utter'd at that time?

Capt. Porter. It was discours'd by every one, which was the best Way and Method: I heard *Mr. Rookwood* say indeed, he believ'd it a very desperate Thing, and he was not very willing to ingage in it. But when *Sir George Barclay* told him he should Command his Party, he reply'd in *French*, *There's an end of it*.

Mr. Phipps. At that second Meeting, Did *Mr. Rookwood* make any Proposal there?

Capt. Porter. I cannot say that I heard *Mr. Rookwood* say any thing in particular; but they all agreed to do the Thing that Day.

Mr.

Mr. *George Harris* was call'd.
Sir B. Shower. We must beg leave to oppose
Mr. Harris's being Sworn; because here is a Pro-
 clamation that says, If any of the Conspirators,
 named in the Proclamation, shall discover any of
 their Accomplices, so as he may be brought to Ju-
 stice, he shall have his Pardon, and 1000 l. Re-
 ward. And we have a Witness ready to prove this
 was *Mr. Harris's* Case. He was in the Proclama-
 tion himself, and did actually discover *Mr. Rook-*
wood, the Prisoner at the Bar, and was Instrumen-
 tal in the taking of him; and if he be brought
 to Justice, then is *Mr. Harris* entitled to this Re-
 ward and his Pardon: And consequently he has
 such an Interest and Advantage to himself, as will
 prevent his being a Witness.

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The Prisoner's Council
 oppose the
 swearing of
Harris, be-
 cause he was
 entitled to
 1000 l. Re-
 ward for Con-
 victing the
 Prisoner.

But upon reading the Proclamation, it did not
 appear *Harris's* Name was in it. And in the other
 Proclamation, where he was named, the Reward
 was given to three or four particular Persons, of
 which the Prisoner was none. Wherefore the Ob-
 jection was not insisted on; But it ap-
 peared a Mi-
 stake.

Page 122.

And *Mr. Harris* was Sworn.
Mr. Harris depos'd, That he was at *St. Ger-*
mains the 14th of *January* last, N. S. That King
James sent for him then, and told him, he was sen-
 sible he had serv'd him well, and now he had an
 Opportunity of doing something for him. That
 he would send him to *England*, where he should be
 subsisted; and he should follow the Orders of *Sir*
George Barclay: And that the King order'd him
 Twenty Lewidores, to bear his, and his Comrade
Hare's Charges; and if they were Wind-bound at
Calais, the President of *Calais* was to subsist them
 then, which he did eight or nine Days. That they
 afterwards came to *London*, and the King having
 told them, they might find *Sir George Barclay*, on
Mondays and *Thursdays*, in the Evening, in *Covent-*
Garden Square; and might know him, by a White
 Handkerchief hanging out of his Pocket. That
 they went thither, but could not meet *Sir George*
 there; but two or three Days after they came to
 Town, *Sir George* had Notice of his Arrival, and
 sent for him, and inquir'd after the King and Royal
 Family:

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Harris's Evi-
 dence of his
 being sent
 from *France*
 by King *James*,
 and his being
 one of *Rook-*
wood's Party
 in the intend-
 ed Assassina-
 tion.

Family: And order'd him five Shillings a Day Subsistence, while he had no Horse, and six Shillings per Day afterwards. And that the first *Saturday* the Assassination was design'd, he gave him a Guinea.

That as to Mr. *Rookwood*, the first *Saturday* the Assassination was to be, he saw him at Mr. *Burack's* Lodgings in a great hurry, and some consternation. That he ask'd what they were going about, and Mr. *Rookwood* told him, if he would go down to Capt. *Counter*, he should know: And that Capt. *Counter* said, they must immediately get ready to go to *Turnham-Green*. That they were at the *Woolpack*; and Sir *George Barclay* came in, and declar'd they were all Men of Honour; and that the Business they were going about, was to Attack the Prince of *Orange*. But *Durance* came in after that, and said, the Prince of *Orange* did not go out that Day. That he was much startled, when they talk'd of Attacking the Prince of *Orange*; and that he came next Morning to Mr. *Rookwood*, and ask'd him, If they were to be the Murderers of the Prince of *Orange*? And Mr. *Rookwood* said, *I am afraid we are drawn into some such Business; but if I had known of it before I came over, I should have begg'd the King's Pardon at St. Germain's, and not have come over hither.* That afterwards, Mr. *Rookwood*, Mr. *Lowick*, and he, had a Meeting in *Red-Lyon Fields*, where they discours'd about the Matter. That Mr. *Rookwood* said, it was a barbarous Thing; but he was sent over to obey Sir *George Barclay's* Orders, which he had several times declar'd he was resolv'd to do.

That on the *Saturday* Morning afterwards, he came to Mr. *Rookwood's* Lodging, and from thence went to Sir *George Barclay's*; and there Mr. *Rookwood* gave him a Note or List of several Names; particularly, Mr. *Hungate*, Mr. *Hanford*, Mr. *Hare*, and his own Name at the top; but that they were the sham Names they all went by. That he was call'd *Jenkins* himself, and that King *James* directed him to go by that Name. That when Mr. *Rookwood* gave him the List, he told him he was going to *Turnham-Green*, and he must go along with

with him; and said smiling, *That he should be his Aid de Camp*, and get the rest of the Gentlemen ready. And that, accordingly, he went to look for several of the Persons; and came back again, and found the Prisoner lying on his Bed: Sir *Geo. Barclay* having told him, the Prince of *Orange* did not go out that Day. That *Rookwood*, *Bernarde*, *Lowick*, and himself, had met several times in *Red-Lyon Fields*, and talk'd of Attacking the Prince of *Orange*.

That his Horse stood at my Lord *Feversham's* Stables, in *Somerset-House*; as did Mr. *Hangate's*, and Mr. *Hare's*: He thought there might be five or six there, that were design'd for the same Expedition. That Major *Holmes* deliver'd him his Horse there, and he had him to another Stable: And that he had Arms deliver'd him by Captain *Counter*.

Mr. *Conyers*. Were you at no other Place together, that *Saturday* Night, the 22d of *February*; because you say you Din'd together?

Capt. *Harris*. Yes; We were at the *Bear Tavern*: There was Mr. *Knightley*, Capt. *Rookwood*, and Mr. *King*, (I an't positive *Rookwood* was there.) And *Knightley* went out, and came in again; and declar'd we must have a great deal of Care of ourselves, or we should be taken up. We discours'd of the intended Assassination there, but what in particular, I cannot tell. We apprehended we were discover'd, having heard that Major *Lowick's* Name, and several others, had been given in to the Council.

Mr. *Comper*. When *Rookwood* gave you that List, What Discourse happen'd in the Room, just before or after?

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Capt. *Harris*. Mr. *Rookwood* said, We were to go to *Turnham-Green*. And he told me, That I was to be one of his Party; that we were to Attack the Prince of *Orange*.

Mr. *Phipps*. Whose Hand-Writing was that List?

Harris. Indeed I know not his Hand-Writing, and therefore cannot tell.

Rookwood. What is that *Blackburne*?

Capt.

Capt. *Harris*. He is a *Lancashire* Man.

Rookwood. It's strange I should give you a List, with a Man's Name I don't know : I declare it, I know no such Person.

Capt. *Harris*. I believe, Mr. *Rookwood*, you are very sensible, I do not accuse you of any thing that is not true.

Mr. *Phipps*. When did you see that List last ;

Capt. *Harris*. He gave it into my Hands, and had it from me again ; or I threw it away afterwards.

Rookwood. But you that were to be an Evidence, ought to have kept it, to justify your Evidence.

Capt. *Harris*. Truly, I did not intend to have been an Evidence at that time.

Att. Gen. If they will ask him any Questions, let them ?

Sir *B. Shower*. No indeed, I will ask him no Questions.

Chamberlain was Sworn.

He depos'd, That six Horses were sent into *Somerset-House* : That Mr. *Lewis* sent in a Note to take Care of them : And that they were taken away, by Persons unknown to the Deponent, about a Week before the Plot was discover'd. That three of them had stood there about Ten Days ; the other, but a Night or two.

Page 126.

John Allen was Sworn.

He depos'd, That seven Horses were sent into *Somerset-House* Stables, by Mr. *Lewis's* Order, a little before the Plot broke out. That some of them staid several Days, but three of them went away the Day after they came in.

Objection
that there
were not two
Witnesses.

The Council for the Prisoner objected, that there were not two Witnesses to any Overt-Act : And, That the being at a Treasonable Consult, was but Misprision at most. Which Sir *B. Shower* said, he submitted to his Lordship's Directions ; notwithstanding the variety and difference of Opinions that have been.

Consulting
and agreeing,
an Overt-Act
of Compass-
sing the King's
Death.

L. C. J. I know not what Opinions you mean : There have been some Discourses in Pamphlets, I agree ; but it was always taken, and held for Law, that Consulting and Agreeing, was an Overt-Act.
To

To which Sir *Bartholomew* answer'd, Here was no Evidence of an Agreement: And that the List mention'd to be given by the Prisoner, to Mr. *Har-*ris, ought not to be admitted as Evidence; there being no such Overt-Act laid in the Indictment. For by the late Act, no Evidence ought to be given of an Overt-Act, that is not laid in the Indictment.

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No Evidence to be given of an Overt-Act not laid in the Indictment.

Page 128.

And Sir *Bartholomew* took some Exceptions to the Indictment; but the Chief Justice told him, that was not a proper time to move them.

Sir *B. Shower*. We will call some Witnesses to Mr. *Porter's* Reputation and Behaviour. I shall not open them to your Lordship, but beg leave to call our Witnesses?

Page 129.

L. C. J. It is not regular to produce any Evidence, without opening it.

No Evidence ought to be produc'd, without opening it.

Sir *Bar. Shower*. Why then, my Lord, If Robbing upon the High way, if Clipping, if converting with Clippers, if Fornication, if Buggery, if any of these Irregularities will take off the Credit of a Man, I have Instructions in my Brief, of Evidence of Crimes of this Nature, against Mr. *Porter*? And we hope the Jury will not think him a good Evidence in this Matter.

Att. Gen. My Lord, They themselves know, that this sort of Evidence never was admitted in any Case, nor can be; for it must tend to the overthrow of all Justice and legal Proceedings: For instead of trying the Prisoner at the Bar, they would try Mr. *Porter*. It has always been deny'd, where it comes to a particular Crime, that a Man may be prosecuted for. And this, it seems, is not one Crime or two, but so many, and so long continued, as they say, and so often practis'd; that here are the whole Actions of a Man's Life to be rip'd up, which they can never shew any Precedent when it was permitted; because a Man has no Opportunity to defend himself. Any Man in the World, may, by this means, be wounded in his Reputation; and Crimes laid to his Charge, that he never thought of: And he can have no Opportunity of giving an Answer to them, because he never imagin'd there would be any such Objection. It is

Page 130.

No Evidence shall be given of any particular Crime a Witness has been Guilty of, unless he has been Convicted of it: But Evidence may be given of his Character in general.

is against all common Sense and Reason, and was never offer'd at by any Lawyer before; at least, so openly.

Sir *B. Shower*. We know it is a common Rule in point of Evidence, that against a Witness, you shall only give an Account of his Character at large, of his general Conversation; but that general Conversation arises from particular Actions: And if the Witnesses give you an Account, of such disorderly Actions repeated, we hope that will go to his Discredit; which is that we are now labouring for.

L. C. J. Look ye, You may bring Witnesses to give an Account of the general Tenour of his Conversation; but you don't think, sure, that we will try at this time, whether he be Guilty of Robbery or Buggery.

Mr. *Phipps*. My Lord, 'Tis the Crime that renders a Man Infamous; and I do not know, why a Man that has had the good Fortune not to be taken, and punish'd, should be in a better Condition, as to the Credit of his Testimony, than one that is taken, and undergoes the Punishment of the Law.

Then the Prisoner's Council call'd their Witnesses, but most of them did not appear; and those that did, said little to the purpose. Only it is observable, that when Capt. *Porter's* Black was call'd, the Court demanded if he were a Christian, before they admitted him to be sworn.

The Council on both sides, agreed to leave it to the Court to sum up, and make Observations on the Evidence.

The Lord Chief Justice having repeated the Substance of the Evidence goes on: " They say, in point of Law, there is no Overt-Act prov'd of any Design against the King's Life, that affects Mr. *Rookwood*. Now, Capt. *Porter* is positive, that he was at the Consult at the *Globe* Tavern; where it was propos'd, debated, and resolv'd upon. He says, That Mr. *Rookwood* did dislike it upon his first being acquainted with it; but being sent over to obey the Orders of Sir *George Barclay*, and Sir *George* producing a Scheme, wherein he was to Command the Party; and telling

Page 131.
Quer. If an
Infidel may
give Evidence.

Page 132.
The Chief
Justice directs
the Jury.

“ telling him he must obey Orders, he answer'd in
 “ *French*, *There's an end of it*. And whether that
 “ does not amount to a Consent and Agreement
 “ to be engag'd in it, is left to your Consideration;
 “ for if it do, it is plainly an Overt-Act.

“ Then you hear further, that *Harris* was told
 “ by Mr. *Rookwood*, that he should be of his Party,
 “ and be his *Aid de Camp*, and go to *Turnham-*
 “ *Green* to Attack the Prince of *Orange*. And he
 “ had a List of Men given him by *Rookwood*, and
 “ was directed to get the rest ready.

Rookwood. My Lord, That List is not in the In-
 dictment; the List in the Indictment, refers to
 Mr. *Cranburne*.

L. C. J. No; but that is an Evidence of your
 being in the Design. I hope that List of Men, will
 be some Evidence of the Consent and Agreement,
 that Mr. *Rookwood* was to Command a Party.

Sir B. Shower. With submission, my Lord, the
 Words of the Act seem otherwise; and that no
 Overt-Act should be given in Evidence, that is not
 expressly alledg'd. Now, the Indictment says, they
 did agree, that Forty Horsemen armed, of which
 the Four named, were to be Four; and every One,
 undertook to be One, who should lie in wait to set
 upon the King in his Coach; and a competent
 Number should set upon the Guards. And then it
 says, in order to fulfil this, They did prepare Horses
 and Arms; and one of them, by the consent of all
 the rest, did carry forward and backward, a List;
 (that is *Cranburne*.) And that particular List is a
 particular Overt-Act alledg'd in the Indictment;
 which makes it plain, they thought it necessary to
 be particularly alledg'd by this Act of Parliament,
 or they could give no Evidence of it. Now, the
 List that Evidence is given of, is suppos'd to be de-
 liver'd by the Prisoner to *Harris*. And we say,
 First, That it is not Evidence that Forty should do
 it, for they may do it without a List. And next,
 it is not Evidence of the List that they have men-
 tion'd, for that is alledg'd to be carried about by
Cranburne. And as the Prisoner himself has ob-
 serv'd, this List given to *Harris*, is not in the In-
 dictment. And therefore no Evidence can be gi-
 ven of it.

The Prisoner's
 Council ob-
 ject, No Evi-
 dence ought
 to be given of
 any thing not
 laid in the In-
 dictment.

Mr.

Mr. Comper. My Lord, We are here in a very strange Case, if we be not very proper in this part of our Evidence. The Overt-Act laid, is, That the Prisoner met together with others, to consult how to Assassinate the King. And there the Prisoner, among the rest, did agree it should be done so and so. 'Tis admitted the Prisoner was there: But say they, if you only prove that he sat by, while there was a general Discourse of such a Matter; but do not prove, that he said or did any thing expressing his Assent, that will not amount to a Proof of any Overt-Act laid. And yet, if we go about to prove further, any Act done that manifests his Assent; then they say you go too far, and prove an Overt-Act that is not mentioned in the Indictment.

L. C. J. They ask, What this giving this List does prove?

Att. Gen. His agreeing, at that Meeting, to the Conspiracy; and the execution of it, by giving that List of the Names of them that were to be of his Party; and his own Name, as Commander of that Party. This he gives to one that was to be of the Party, and particularly, was to be his *Aid de Camp*, to get them ready for the execution. Is not this an Evidence of the Agreement, which is the Overt-Act? No Man in the World can be Convicted of Treason, if this Doctrine be not true.

Any thing
may be given
in Evidence,
that tends to
prove an
Overt Act
laid in the In-
dictment.

L. C. J. “ Then, Gentlemen, As to this Mat-
“ ter which they have objected, That this List,
“ given on the Day of the intended Assassination,
“ ought not to be allow'd as Evidence to prove
“ the Treason, because it is not specially laid in
“ the Indictment; but is by the Act of Parlia-
“ ment excluded from being prov'd to Convict
“ the Prisoner. Although the Act doth exclude
“ the giving Evidence of any Overt-Act that is not
“ laid in the Indictment; yet it doth not exclude
“ such Evidence, as is proper and fit to prove that
“ Overt-Act that is laid in the Indictment. There-
“ fore the Question is, Whether this giving the List,
“ does not prove some Overt-Act that is alledg'd in
“ the Indictment? There is in the Indictment, an
“ Agreement laid to kill the King; and if that be
“ prov'd,

“ proved, that’s an Overt Act of this Treason:
 “ Now, when the Consent and Agreement of
 “ Mr. *Rookwood*, to that Design, is prov’d, surely
 “ the Proof of his giving a List of Men, is a
 “ further Proof that he did agree to it; and then
 “ it is very proper to be given in Evidence: For
 “ if by the New Statute, No one Act can be given
 “ in Evidence to prove another, then must not
 “ only the Overt Act, but also the Evidence of
 “ that Act be express’d in the Indictment.

“ *Gentlemen*, In the first Place, if you do be-
 “ lieve that there was such Consults and Meetings
 “ where this intended Assassination of the King
 “ was debated and resolv’d upon; and that Mr.
 “ *Rookwood* was present, and did agree to it, that
 “ is an Overt Act: And again, if you are satisfi-
 “ ed that there was an Agreement to prepare, and
 “ provide a Number of Men to set upon the King
 “ and his Guards, in the manner you have heard;
 “ and he was concern’d in making this Provision,
 “ and was to have a Post, and command a Party
 “ in that Attack: That is a further Proof of that
 “ Consent and Agreement that is laid in the In-
 “ dictment.

Then the Jury withdrew, and after a Quarter
 of an Hour return’d, and brought the Prisoner
 in *Guilty*.

*Rookwood is
 Convicted.*

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The Tryal of CHARLES CRANBURN.

Die Martis, 21 Aprilis. 8 W. 3. 1696.

*At the Sessions of Oyer and Terminer, for the
 County of Middlesex; sitting in the Court of
 King’s Bench, at Westminster.*

WHILE the Jury were withdrawn to consider
 of their Verdict, concerning *Ambrose
 Rookwood*, the Court order’d *Charles Cranburn* to
 be set to the Bar; and he was brought in Irons:
 Whereupon, the Chief Justice order’d the Keeper
 of *Newgate* to knock off his Irons, for that a Pri-
 soner ought to stand at ease at his Tryal.

The Prisoner
 ought to have
 his Irons ta-
 ken off at his
 Tryal.

L. C. J.

Sir John Holt. L. C. J. Gentlemen, You that are of Council for the Prisoner, if you have any thing to move for your Client, you may move it.

Exceptions may be taken to the Indictment after Plea pleaded, and before the Tryal. Att. Gen. My Lord, unless their Exceptions are some of the Particulars mentioned in the Act, they must not move them now, after Plea pleaded, before the Tryal, but must do it in Arrest of Judgment.

L. C. J. It is very true, the Course has not been to quash an Indictment for Treason or Felony, but it may be done.

1st Exception. Sir Bar. Shower. I have several Exceptions, Five at least, and one of them is for false *Latin*; the Indictment says, *Anno Regni dicti Domini Regis nunc septimo*, and *Lewis* is the last King mentioned.

Page 136. L. C. J. But, Do we call the *French* King *Dominus Rex*?

Mr. Phipps. It is not said *Angliae*.

L. C. J. But whenever it is *Dominus Rex*, We understand it of the King of *England*.

L. C. J. Treby. Besides, as to the Rule that Sir Bar. Shower mentions, it must relate to the next Antecedent, *unless the Sense would be prejudic'd*: That's the Restriction of the Rule.

2^d Exception. Sir Bar. Shower. My Lord, there is another Exception, it is said *Divirsis diebus, & vicibus tam ante quam postea*; and then afterwards it says *postea scit eodem Decimo Die Februarii*, that is repugnant.

Sir Tho. Trevor. Att. Gen. That *Postea* is another Sentence, and relates to other Matters.

L. C. J. There is nothing in that Objection, when they tell of different Matters.

3^d Exception. Sir B. Shower. We have another which we think a fatal Exception: We say this Indictment of High Treason being against a Subject born, ought to have had the Words in it, *contra supremum naturalem Ligeum Dominum suum*, according to *Calvin's Case* in the 7th Report, *Fol. Septimo*: And so is the Case in my Lord *Dyer*, 144; Where it is said if an Indictment of Treason, be against an Alien, if the Word *naturalem* is inserted it is faulty; because he owes but local Allegiance, and not a natural one: Now this being against natural born

born Subjects, the Words *naturalem Dominum* ought to be inserted; so are the Forms, against the Traytors in the *Powder-Plot*, and the Regicides; and *Tucker's* Attainder was reversed for that the Words *contra debitum Ligeantiae suae* was omitted: For there are certain Forms of Words, the Omission of which is Error, so we think these would be in this Case, as if the Word *proditorie* had been left out; or as if in a Case of Felony and Burglary, the Words *Felonie & Burglaciter* had been left out.

Mr. *Phipps*. My Lord, I never saw any one Indictment of Treason, against a Subject born, without the Word *naturalem*: In *Counter's* Case in my Lord *Hobart*, 271, 'tis said, That if there be an Indictment against a Subject born, it must be *contra naturalem Dominum*; if against an Alien, *naturalem* must be left out: To say *contra ligeantiae suae debitum* will not do, for that may be said against an Alien; because he owes a local Allegiance, though not a natural one.

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Att. Gen. As to the Words *naturalem Dominum*, there are Precedents with, and without them; and for Six or Seven Years past they have always been omitted: Nor are they necessary if there be Words in the Indictment, as in this, that he did it against the Duty of his Allegiance to his lawful and undoubted Lord.

L. C. J. You quote *Calvin's* Case, and the other Cases that are there put; those are all Cases of Aliens: And against an Alien it is said it will be a good Indictment, to charge him with High Treason, if the Word *naturalem* be left out.

An Alien not to be indicted as a Native.

And as to *Tucker's* Case, it was reversed for want of the Conclusion *contra debitum ligeantiae suae*, which Words are material; for if it be not against the Duty of his Allegiance, as it cannot be if he owes him none; it is not High Treason: No doubt it would be a Fault, in Case of an Alien, to lay it *contra naturalem Dominum suum*, because he owes only a local Allegiance, and you restrain it to natural Allegiance, which he does not owe: But Allegiance generally, as laid here, comprehends all sorts of Allegiance, Natural and Local.

Contra ligeantiae suae debitum, necessary in every Indictment.

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Sir Bar. Shower. How then, my Lord, come all the Lawyers of all Ages, to put in those Words in Indictments of High Treason, against Subjects born.

4th Exception.

L. C. J. I have seen abundance of Precedents that have only *contra ligeantia suæ debitum* generally: For Allegiance is the Genus, and if that be suggested, all the Species are contain'd under that.

Sir Bar. Shower. My Lord, another Objection is, Here is a Fact laid which is a Second Overt-Act; and they do not lay it to be done *traite-rously*: It is laid in this manner, *Et ad execrabilem Assassinationem illam exequend'*, at such a Time and Place; *proditorie tractaverunt proposuerunt & consultaverunt eiis modis & mediis*, &c. and then comes this which we except against, *Et consenserunt agreaverunt & assenserunt, quod quadraginta homines*, &c. Now this is a plain distinct Act, and there is no *proditorie* to it; and if they can shew me an Indictment in which an Overt-Act is laid, of which any Evidence was given, and it had not the Word *proditorie* in it, I am very much mistaken.

Att. Gen. This is the strangest Suggestion that ever was, when we have set forth that *traite-rously* they did so agree of the Ways and Means, and then set forth the particular Means, that there must be *proditorie* again to that; it is part of the Sentence, and the other Part, as we have laid it, is not compleat without it.

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L. C. J. It is all at the same Time, and must be intended the same Consult and Contrivance: That they consulted of the Ways and Means, and then agreed so many Men should be provided.

Mr. Phipps. No my Lord, We say that is another Overt-Act.

L. C. J. Treby. It seems to me, to be a specifying and particularizing the Ways and Means that they had consulted of, and concluded on.

Quer. If the Word *preditorie* be necessary to be repeated in every Overt Act that's laid.

L. C. J. Truly I am not satisfied, that it is necessary, after you have laid the *proditorie* as to the particular Treason, to lay it again to the Overt-Act; for the Overt-Act is but the Evidence of the

the Treason: The Treason itself lies in the Compassing, which is an Act of the Mind.

Sir *Bar. Shower*. Then my Lord, here is another Thing: The Indictment says, *Juratores pro Domino Rege presentant*, That they, as false Traytors, did compass the Death of the King, and the Slaughter of His Subjects; and they did meet and consult, and agree how to do it: *Et iidem* Christopherus Knightley, and the rest, to fulfil their said traiterous Intentions and Imaginations; did afterwards the 10th of *February*, buy Arms and Horses: Now our Objection is, That it does not appear, that any one of these Overt-Acts are the Presentment of the Jury: They ought to have begun again, either with a *Quodque*, or something that should have referr'd to the first *Juratores presentant*; or else they should have begun quite again, with a *Juratores ulterius presentant*; and not have coupled them as this is, with an *Et*, most Forms begin with an *Uterius presentant*; but here we find no Overt-Act so introduc'd: They might present Part, and not present the other Part, for any thing that does appear. Your Lordship remembers the Case of the King and *Trobridge*, upon a Writ of Error, to reverse a Judgment for erecting and continuing a Cottage against the Form of a Statute; now *contra formam Statuti* was in the Beginning of the Indictment, but not in the Conclusion; to the *Erecting*, but not to the *Continuing*.

L. C. J. This Indictment is for one sort of Treason, and that is for compassing the Death of the King; and I think it more proper to have but One *Quod* than to have more: For it makes the whole Indictment more entire. As to the *Juratores ulterius presentant*, that is never proper where the Species of Treason is the same; for indeed if there had been Two distinct Treasons, the one for compassing the Death of the King, and the other for levying War; in that Case you must bring it in by *ulterius presentant*, because they are Two several Offences, though compriz'd in one Bill; and they are in Law as Two Indictments. And so it is in the Case you mentioned of Cottages;

ges; it is one Offence to erect a Cottage, and another Offence to continue a Cottage; and they are to have several Punishments: And because they there jumbled them both together, in one Indictment, that Indictment was held to be naught. For by Law the Indictment, for erecting 'a Cottage, ought to conclude *contra formam Statuti*, and then the Jury must begin again, *Et ulterius presentant quod*; the Cottage was continued against the Form of the Statute, because they are several Offences; but here the High Treason is but one and the same Offence, and the other things are but Overt-Acts to manifest this Treason, the compassing the Death of the King; and truly I think it is better as it is.

L. C. Baron. Is it not as well to say, *and* they did such a Thing; as to say, *and that* they did such a Thing?

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L. C. J. I cannot reconcile it to my Reason, but it should be as good Sense without *that*, as with.

No Challenge to a Juror, that he has given a Verdict against another in the same Indictment.

Then the Court adjourn'd 'till the Afternoon; when the Court being sat again, the Prisoner desired Pen, Ink and Paper, which was granted; and the Jury were call'd.

Mr. Phipps. My Lord, I hope those who were upon the last Jury shall not be call'd upon this, they having given a Verdict upon the same Indictment; and therefore, not so indifferent as the Law intends they should be.

L. C. J. What though it be upon the same Indictment, the Evidence is not the same, for they are distinct Offences.

While the Jury were Swearing, Sir Bar. Shower said to the Clerk, I hope you take Care of the Challenges.

Where Council is allow'd the Court must not advise the Prisoner.

L. C. J. Nay, You should take Care of his Challenges who are his Council.

Sir Bar. Shower. I hope your Lordship will also be of Council for him.

L. C. J. We are to be equal and indifferent, between the King and the Prisoner: But you, that are now his Council by Law, ought to take Care he loose no Advantage.

The

The Jury being Sworn, Proclamation for Evidence, was made as usual; and the Jury were charg'd with him.

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The Prisoner had been indicted and arraign'd for High Treason, in compassing the Death of the King, together with *Christopher Knightley*, *Robert Lowick*, and *Ambrose Rookwood*; but the particular Overt Acts, with which the Prisoner was charged were, " That he did meet, and consult with " several other false Traytors, of the Way and " Means, and of the Time and Place, when and " where they should assassinate the King; and " that they agreed that Forty Horsemen should " set upon the King in his Coach, as he came from " Hunting; whereof, the Prisoner did undertake " to be one: That he did provide Horses and " Arms, for that purpose: And that he carried a " List of the Assassins from one to another.

The Overt-Acts, with which the Prisoner is Charg'd in the Indictment.

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Mr. *Montague* opened the Indictment; and Mr. *Attorney General* shew'd the Nature and Course of the Evidence.

Then Capt. *Porter* was Sworn.

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Sol. Gen. Pray give an Account, what Share the Prisoner was to have in this intended Assassination.

Sir *John Hawles*.

Capt. *Porter*. About a Year before the Assassination was on foot, I employ'd him to buy Arms, of the Brokers at Second Hand: I gave him, at several Times, Ten Pounds, and he bought me Ten Cases of Pistols; and he brought a Sword-Cutler to me, of whom I bought about Twenty Swords: When Sir *George Barclay* came into *England*, and his Business was resolv'd on, I acquainted the Prisoner with the Design: and he was ready, both *Saturdays*, to go along with me: On *Saturday* the 22d, I sent him with a Message to Sir *William Parkins*, for the Two Horses he had promised to furnish me with; out of his Five that he was to furnish. He came back and told me that there was a Messenger came and said, that the King did go out; and he knew where to have the Two Horses: That Mr. *Charnock* was afraid we should not have the full Number of Men; and desir'd me to send him the Names of my Men: I did write a

Porter's Evidence of the Prisoner's buying Arms, and carrying a List of the Men he furnish'd to Mr. *Charnock*, &c.

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Lift of the Names of my Men, and went afterwards to the *Blue Posts* in *Spring-Garden*, whither he was to come to me; he did so, and brought back the Lift of my Men, with the Lift of Mr. *Charnock's* Men written underneath it; and at the same time News was brought, that the King did not go abroad that Day.

L. C. J. You said, that some long Time before the Assassination was on foot, you sent him to buy Arms, For what Purpose were those Arms?

Porter. My Lord, he knew of my being a Captain in Collonel *Parker's* Regiment these Two Years; and those Arms were bought, to be ready against King *James* Landed; which was design'd several times.

Att. Gen. When did you acquaint *Cranburn* with the Assassination?

Porter. As soon as Sir *George Barclay* acquainted me with it, and desir'd me to get what Men I could to effect it, I sent for *Cranburn* to my Lodgings in *Norfolk street*: (I cannot be positive whether it was *Thursday* or *Friday*, or what Day, but it was one Day in that Week, before the 15th :) And there I acquainted him with it and told him, I had set him down for one of my Party; and would provide him Horse and Arms: And he did agree to go along with me; and on *Friday* before the 15th, I sent him with Three Case of Pistols to Sir *William Parkins*, to furnish the Three Men he was to mount with his own Horses. On *Friday* before the 22d, which was the last Time the Assassination was designed, I sent him to look after the Horses, that *Gunn* said, he believ'd he could help me to: And he came to me, to the *Sun Tavern* in the *Strand*, and told me he and *Jeffery Gunn* had found Three Hackney Horses in *Bloomsbury* for our Purpose; and I came out of the Room where I was, with Sir *George Barclay* and others, and there was *Kendrick*, *Keys*, and *Cranburn* in another Room; and I told them, we were resolved to put it in Execution the next Day.

Att. Gen. Do you remember what Health were drunk after you heard the King was not to go abroad?

Porter.

Porter. I don't remember what Healths were drunk that Day particularly, but on the *Thursday* or *Friday*, we drank a Health *To the squeezing of the Rotten Orange* on *Saturday*; and Mr. *Cranburn* was present, and did drink it.

Mr. Comper. Did he meet you by Appointment, on *Saturday* the 15th, or was it by accident?

Porter. By Appointment, as all the rest did, to get ready to go upon the Design; and so it was both Days.

Sir Bar. Shower. Who was by, upon the *Friday* before the 22d, at the *Sun-Tavern* in the *Strand*, when you and Mr. *Cranburn* were there?

Porter. I was in one Room with *Sir George Barclay*, *Sir William Parkins*, and *Capt. Charnock*; and afterwards I went into another Room, where were *Kenrick*, *Cranburn*, and *Keys*.

Mr. Phipps. Was not *Gunn* there, when you first came in?

Porter. To the best of my Remembrance, he came in afterwards, but I cannot positively tell; for I was in and out several Times.

Sir Bar Shower. Are you sure the Design was communicated to Mr. *Cranburn*, before the 15th?

Porter. Yes Sir, I am sure of it.

Mr. *De la Rue* was Sworn.

Sol. Gen. Pray give an Account what you know of the intended Assassination.

De la Rue. Upon *Saturday* the 15th of *February*, the Day that the Design was to have been put in Execution, I went to Mr. *Charnock's* Lodgings in *Norfolk-Street*, to inform my self, whether they resolv'd, on that Day, to go out upon the Design: And I found, by Mr. *Charnock*, they did resolve it; and he told me, he had sent a Messenger to C. *Porter*, and says he, *if you will stay a little Time, I shall have his Answer*; the Messenger came back and told him, *Capt. Porter* din'd at the *Blue Posts* in *Spring-Garden*; then I went to my Lodgings, and Mr. *King* told me the King did not go out that Day. After Dinner I went to Mr. *Porter*, at the *Blue Posts*, and he had Five or Six with him; and among the rest, Mr. *Sherburn*, and Mr. *Kenrick*, and a

Page 147.
De la Rue's Evidence of
Mr. *Cranburn's* carrying a List
of the Men
from one to
another.

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little after came in the Prisoner, Mr. *Cranburn*; this is all I can say as to that Day: On *Saturday* the 22d, Capt. *Porter* sent his Servant to me, to tell me, he would speak with me at his Lodgings, which were then, at *Brown's* a Surgeon's, in *Maiden-Lane*; when I came in he was in Bed, and he told me in *French*, *Touts parties sont prests*, All Parties are ready: He arose and dress'd himself, and in came Mr. *Cranburn*. and Mr. *Porter* went out to him into the Dining-Room; soon after came in *Pendergrafs*, Mr. *Keys*, and Mr. *King*, and Cap. *Porter* took a Pen and Ink, and wrote down a List of his Party, and put me down first; and that List was given to Mr. *Cranburn* to carry to Mr. *Charnock*, and Mr. *Porter* told me he was disappointed of some People, and desir'd me to get him some other Men, and sent me particularly to one whom Mr. *King* propos'd; and when I returned Mr. *Porter* and Mr. *Pendergrafs*, and Mr. *Oldfield* and I went in a Coach, from Mr. *Porter's* Lodgings, to the *Blue Posts* in *Spring-Garden*: When we had been there a little time, Mr. *Cranburn* comes back, and brings this List, and told Mr. *Porter*, there was a List of Mr. *Charnock's* Men at the bottom of that List; and I took the List in my Hand, and there was Mr. *Charnock's* List of Six or Seven of his Party, and at the bottom of it was R. C. I think, for *Robert Charnock*: Mr. *Porter* took Mr. *Cranburn* from the Company into another Room, and I went after them; and he told Capt. *Porter*, in my hearing, that the King did not go out that Day: (There is one thing I had forgot, When I was at Mr. *Porter's* Lodgings, Mr. *Cranburn* told me the King was to go out between Ten and Eleven; for Mr. *Chambers*, the Orderly Man, had been with Mr. *Charnock* and Sir *William Parkins*, to let them know so much.)

It was about Eleven or Twelve a Clock, when Mr. *Cranburn* return'd with the List to the *Blue Posts*; and he told Mr. *Porter*, that Mr. *Charnock* was apprehensive the Thing was discover'd; and therefore desir'd him to have a Care of himself, for he himself was resolv'd not to lie at Home that Night.

They

They staid at the *Blue Posts* and din'd, and after Dinner, or a little before, *Keys*, the Trumpeter, came up and told us, that my Lord of *Oxford's* Regiment of Guards was return'd from *Richmond*, foaming; and that he saw the King's Coaches return'd to the *Mews*: and Mr. *Cranburn* was by all the time. After Dinner, the usual Jacobite Healths were drunk, viz. To King *James*, the Prince of *Wales*, the Restoration, &c. And Mr. *Porter*, or one of the Company, took an Orange in his Hand, and squeez'd, and drank a Health *To the squeezing of the Rotten Orange*; which went round, and the Prisoner drank it. But we being apprehensive the thing had taken Air, Mr. *Porter* went out of Town about Two a Clock, and the Company broke up.

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Mr. *Phipps*. At the time you say this List was given by Capt. *Porter* to Mr. *Cranburne*, Did Mr. *Porter* declare to what purpose the List was sent?

De la Rue. No, Sir; But putting me down first, Mr. *Pendergrafs* said to me, you are to be Captain. And Mr. *Porter* gave it to Mr. *Cranburn*, to carry to Mr. *Charnock*: I don't well remember the Message; but the List was carried to Mr. *Charnock*, and to the best of my Memory, it was to give Mr. *Charnock* an Account what Men he was sure of.

Cranburn. What Message was that, you say, I brought from Sir *George Barclay*?

De la Rue. I don't say you brought any Message from Sir *George Barclay*; but I said, you told Mr. *Porter*, that Mr. *Charnock* bid you caution him to take Care of himself; and desir'd he would come that Way, for Sir *George Barclay* and he wanted to see him. And Mr. *Porter* said, it was an unreasonable Thing for Mr. *Charnock* to desire it, because they knew he was under Circumstances that it was not proper for him to go; and he wonder'd rather they would not come to him.

Mr. *Pendergrafs* was Sworn.

Sol. Gen. Pray give an Account how far the Prisoner was concern'd in the intended Assassination?

Capt. *Pendergrafs*. My Lord, The 13th of *February* I came out of *Hampshire*: Mr. *Porter* sent for me to come to Town, and I met him that Day

Pendergrafs's
Evidence of
the Prisoner's
being concern'd in the
Assassination.

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at the *Blue Posts* in *Spring-Garden*; there he told me of the Assassination that was to be done on *Saturday* following. The next Day, *Friday* the 14th, we Din'd at the *Rose Tavern*, where the Prisoner Din'd with us; and we talk'd of the Business, and were to be in a readiness next Day, to Assassinate the King as he came from *Richmond*. The next Day, when we were to do the Business, we met at the *Blue Posts* in *Spring-Garden*; and finding the King did not go abroad, we din'd there, and talk'd again of Assassinating the King; the Prisoner was by at the same time. They were all mightily concern'd the King did not go that *Saturday*; and it was then agreed, every body should prepare against next *Saturday*; so we parted. Sometime the next Week, I met Mr. *Porter*, and he ask'd me, If I had a Horseman's Sword; I told him No. Says he to *Cranburne*, Let Capt. *Pendergrafs* have one of the Horsemens Swords that you have got: Accordingly Mr. *Cranburn* left one at my Lodgings in *Suffolk-street*, and I have it still. On *Saturday* the 22d, I came to Mr. *Porter's* Lodging between Nine and Ten in the Morning, and the Prisoner was there; and I heard Mr. *Porter* give him a Message to Sir *W. Parkins*, for some Horses; and some time after, he came back, and brought an Account that the King was to go to *Richmond*; so every body was to get ready. And, he said, Mr. *Charnock* desir'd Mr. *Porter* to send a List of his Men; and Mr. *Porter* wrote a List of his Men, and gave it the Prisoner to carry to Mr. *Charnock*; and bid him meet him at the *Blue Posts*. Mr. *Porter*, Mr. *De la Rue*, and I, took Coach, and went to the *Blue Posts*: And the Prisoner came thither, and brought the List back, with a List of Mr. *Charnock's* Men underneath. And at the same time brought an Account, that the King did not go abroad that Day; and presently after, we had the same Account from other Hands: And Capt. *Porter* and I went out of Town, and we heard no more of it.

L. C. J. Are you sure he did agree to this Matter before the 15th?

Capt. *Pendergrafs*. Yes, I am sure of it; He agreed to it *Friday* the 14th, at the *Rose Tavern* in *Covent-Garden*.

L. C. J.

L. C. J. Are you sure there was an Agreement to pursue it, the 22d?

Capt. Pendergrafs. Yes, I am sure there was, my Lord; and the Prisoner was there.

Sir B. Shower. What did the Prisoner say? Or did you take him to agree, by being silent?

Capt. Pendergrafs. He said, He hop'd we should execute our Business the next Day; and he agreed to be one in the execution of the Design?

L. C. J. What Day was that?

Capt. Pendergrafs. It was the 14th of *February*, and the same Night I gave an Account of the Matter to my Lord *Portland*.

L. C. J. Well, What say you to it for the Prisoner?

Sir B. Shower. Mr. *De la Rue* does not swear to any Privy of the Prisoner, what the List was for; nor to the Delivery of the List, which is the Overt-Act laid in the Indictment. Nor upon what Account this List was written, or sent, or brought back again: Or any Word that proceeded from *Capt. Porter* to him, upon the sending the List, or receiving it back again. So that he does not say any thing to affect the Prisoner at the Bar: For as to the drinking of Healths, and being present when those Healths are drunk; though it be Evidence of Disaffection to the Government, or too much good Manners and Complaisance to the Company, yet, we hope, those are no Evidences of Treason. And as to Mr. *Pendergrafs's* Evidence, I must confess it comes home; but then he is but one Witness. As to *Capt. Porter*, we desire to call a Witness to the Credibility of his Testimony. He says, he sent *Cranburn* with *Gunn*, from the Cockpit, to see for *Hackney* Horses; and that *Cranburn* came to him to the *Sun* Tavern, and there they had some Discourse about executing the Design the next Day: And being ask'd if *Gunn* was by, he says, he came in afterwards. Now we shall prove *Gunn* came in with the Prisoner, and was with him all the time.

Then *Jeffery Gunn* was Sworn.

He depos'd, That he came to the *Sun* Tavern with *Cranburn*, when Mr. *Porter* was there; but he

The Court I
enter upon
his Defence,

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he was not with the Prisoner all the time, for he went home to eat some Victuals, and came again.

Mrs. *Gerrard* was Sworn.

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Mr. *Phipps*. Mr. *Cranburn*, Pray ask Mrs. *Gerrard* what you have a mind.

Cranburn. Pray, What do you know of Capt. *Porter's* going out in Disguise, and wearing false Hair and Vizards, and going upon the High-way, and such things?

Page 153.

Gerrard. I know not what Mr. *Cranburn* means, I do not know any thing of my Master's going upon the High-way, or wearing Vizards, or false Hair: But he had once a Patch on, when he was forc'd to keep out of the Way, upon the Account of the *Dog Tavern Business in Drury-Lane*.

Then several other Witnesses were call'd, but did not appear.

Sir *B. Shower*. We must submit it to your Lordships Directions, Whether what Capt. *Porter* and *Gunn* says, be Consistent? So that you can be satisfied there are two lawful, credible Witnesses, to prove any Overt-Act.

L. C. J. The Question is, Whether there be occasion for any Directions?

Cranburn. I declare Mr. *Porter* never made me acquainted with this Design, till he swore it here: And though Capt. *Pendergrafs* does not remember it, Capt. *Porter* did declare in *Spring-Garden*, the 22d, by the Rails, when he came out of the *Blue Posts*; That if the Design miscarried, Mr. *Charnock* might thank himself, for he never communicated the Secret to any of his Friends.

The Prisoner
Convicted.

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Then my Lord Chief Justice sum'd up the Evidence, and the Jury withdrew; and within a quarter of an Hour return'd, and brought the Prisoner in *Guilty*.

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The Tryal of Major ROBERT LOWICK came on April 22, 8 W. III. 1696.

The Council
for the Prisoner
except to

THE Court being sat, *Robert Lowick*, the Prisoner, was set to the Bar.

Mr. *Mompesson*. My Lord, They have not laid any Time and Place, where the Consent and Agreement

ment was, for the Forty Men that were to set up on the King and his Guards, There is a Time and Place laid where they met, and discours'd of the Ways and Means how to kill the King; but when it comes to the *Assenserunt, Consenserunt, & Agreaverunt*, that being another Act, there ought to be another Time and Place laid. They may meet at one Time and Place, and at another Time and Place they may agree. In *Dyer*, 68 *b.* and 69. *pl.* 28. A Man was Indicted for Murder, That he at such a Place, in and upon the Person that was Murder'd *insultum ferit & ipsum*, the Person that was Murder'd; *cum quodam Cultello*, of such a Price, *percussit*. And he does not shew the Place where he struck him, nor had the Indictment the Words *ad tunc & ibidem*, and therefore the Court held it Void. And in *Noy*, 114. it was mov'd in Discharge of a Rescue, that the Return was, They, *viz.* *A* and *B* aforesaid, the Bailiffs, *ad tunc & ibidem vulneraverunt, &c.* and the aforesaid *George, &c. Rescuserunt*, without *ad tunc & ibidem*; and therefore the Return was adjudg'd insufficient. For although in Conveyances, a Clause or Word in the beginning or end, may refer to the whole; yet in Indictments, every Sentence must be certain, plain, and express, and have its own Time and Place. And my Lord *Coke* tells us, in *Calvin's Case*, 5 *b.* *That Indictments of Treason, of all others, are the most curiously and certainly Indicted and Penn'd.* And all those that I have seen, have contain'd more Certainty than the Indictment before your Lordship. And, my Lord, when they go further, and say, *Et quilibet eorum proditorie super se suscepit esse unum*; there is no Place or Time alledg'd where that was done, which of necessity should be mention'd: For it is a constant Rule in our Books, that what is issuable, ought to have a Place where it may be try'd.

L. C. J. They say, they met such a Day at *St. Paul's Covent-Garden*, that's in the beginning, and did consult how to kill the King; and they consented and agreed among themselves, that it should be done in this manner. Does not this refer to both Time

the Indictment, for that the Time and Place was not ascertain'd in every Fact that was laid.

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Sir John Holt.
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Time and Place in the beginning? It is a continuing of the same Sentence, and makes all but one and the same Act.

L. C. J. Treby. You would make the Repetition so frequent and reiterated, that it would become absurd.

Sir B. Shower. We would have this Indictment, as all others are: The Precedents are as we say, and we hope this shall pursue 'em, or else be quash'd.

L. C. J. Suppose this should not be right, that will not vitiate the whole Indictment.

Mr. Mompeyson. But your Lordship wont suffer them to give Evidence of that part that is Vitious.

L. C. J. Yes, It comes within the first Words of the Time and Place laid: They may give Evidence of it, because this is but a setting forth the manner agreed upon, for the execution of the Design, that was before Consulted and Treated of. It is comprehended in the former Words; and if they had omitted this out of the Indictment, the Indictment had been never the worse; there had been a sufficient Overt-Act alledg'd, to prove the Compassing and Imagining the Death of the King. For if People, at such a Time and Place, meet, and propose the Way and Means how to effect it, Do you think the Indictment would not be good enough, without laying the particular Means agreed upon? Certainly it had been well enough if this had been omitted. Do you think they cannot give in Evidence this, as a Proof of the Overt-Act? Certainly they may.

Sir B. Shower. The Question will be, my Lord, Whether the Conclusion of the Indictment *contra legiantie sue debitum*, shall be taken distributively to every Fact? And if so, then there ought to be Time and Place alledg'd to every Fact.

* *L. C. J.* Suppose you lay several Overt-Acts, and prove but one; yet he is to be found Guilty of the High Treason, which is the Imagination and Compassing the Death of the King; which is the Crime laid in the Indictment. Then suppose this was left out of the Indictment, they might give it

in

* The Indictment cannot be quash'd for uncertainty in laying of one Overt-Act; for if any Overt-Act that is laid in the Indictment be prov'd, 'tis sufficient.

in Evidence, as a Proof of the Overt-Act, that is well laid for Time and Place. And therefore, tho' it be express'd, and not so fully and particularly laid, we cannot quash the Indictment for it. As to your Case, Mr. *Mompesson*, which you quote out of *Dyer*, it is possible a Man may make an Assault at one Time, and at another Time make an Assault, and give a Stroke, but this is all one Act; it does but specify what was generally consulted of and propos'd. Then for your Objection of *quilibet suscepit* to be one, that is well enough; it is all still but one Sentence.

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Sir *B. Shower*. One of which is it? For they have not laid in the Indictment what it is, Whether it be one of the Four, or one of the Forty?

L. C. J. Whether it be one of the Four, or one of the Forty, is not material: For cannot One be found Guilty, and the rest Acquitted? The one is not charg'd with the Act of the other; but they are several Offences, and each must answer for himself. In all Indictments, Offences are several. Suppose an Indictment of Conspiracy, and it is laid in the Indictment, that Four did Conspire; Can't you prove that Two Conspir'd? No question you may. It is not necessary that every one should be prov'd to have Conspir'd; and yet there the very Gift of the Action, is the Conspiring together. Suppose it were alledged, that Four did beat a Man, and does not say *Quilibet eorum* beat him, you may give in Evidence, that One did beat him. In Riots you may lay it against Ten, but it is sufficient, I hope, if you prove it upon any Three of them.

Where several are in one Indictment, and any of them are found Guilty, it is sufficient as to them.

* *Att. Gen.* The Difference betwixt Contracts and Crimes is, That Contracts are joint, but Crimes are in their own Nature several.

Otherwise in Contracts.

* Sir *Thomas Trevor*.

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The Indictment for Compassing the Death of the King, and to that end, Consulting and Agreeing to lie in wait, and Assassinate him in
as his Coach.

Then the Jurors were call'd, and after the Prisoner had Challeng'd several, a Jury was Sworn; and Proclamation made for Evidence as usual.

“ THE Indictment sets forth, That the said
“ *Robert Lowick*, together with *Christopher*
“ *Knightley*, *Ambrose Rookwood*, and *Charles Cran-*
“ *burn*, the 10th Day of *February*, in the 7th Year
“ of the King, and divers other Days and Times,

“ as

“ as well before as after, at the Parish of St. Paul
 “ *Covent-Garden*, Did Maliciously and Traite-
 “ rously Compass and Imagin the Death of the
 “ King, and the Slaughter of his Subjects. And
 “ that in Order to effect the same, They, with
 “ divers other Traytors, on the same 10th Day of
 “ *February*, in the Year abovesaid, did propose, con-
 “ sult, and agree, by lying in wait, to Assassinate
 “ and Murder our said Lord the King. And did
 “ then and there, Traiterously Consult of the Man-
 “ ner and Means, and the Time and Place, where,
 “ when, and how, our said Lord the King, so by lying
 “ in wait, they might the more easily Kill and Mur-
 “ der. And did consent, agree, and assent, that
 “ *Forty Horsemen*, or thereabouts, of whom the said
 “ *Christopher Knightley*, *Robert Lowick*, *Am-*
 “ *brose Rookwod*, and *Charles Cranburn*, would
 “ be Four; and every one of them, Traiterously
 “ took upon himself to be One; should set upon the
 “ King in his Coach, and upon the Guards attend-
 “ ing him; and to Assassinate and Murder the said
 “ King, &c. And they the said *Christopher Knight-*
 “ *ley*, &c. the Day and Year aforesaid, the bet-
 “ ter to execute their Traiterous Intentions, did
 “ provide Horses, Arms, &c. put in the Tryal of
 “ *Ambrose Rookwood*; against the Duty of their
 “ Allegiance, the King's Peace, &c.

And provi-
 ding Arms
 for that pur-
 pose.

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Mr. *Montague* open'd the Indictment, and Mr.
Attorney shew'd the Nature and Course of the Evi-
 dence.

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Sir John Hawles.

Then Mr. *Harris* was call'd, and sworn.
Sol. Gen. Pray give an Account what you know
 of the intended Assassination? Tell your whole
 knowledge of it?

Harris's Evi-
dence of his
being sent
over by King
James, to as-
sist in the As-
sassination.

Mr. *Harris*. On the 14th of *January*, N. S. I
 was order'd to wait on King *James* at Dinner: Af-
 ter Dinner, I was call'd in, and Colonel *Parker*
 and Mr. *Hare* was with the King. King *James*
 told me, He was sensible of the Service I had done
 him, and now he had an Opportunity of doing
 something for me. I was to go into *England*, and
 there to be subsisted: And I was to follow the Or-
 ders of *Sir George Barclay*. The King told me, I
 should find *Sir George Barclay* in *Covent-Garden*,
 with

with a White Handkerchief hanging out of his Pocket; on *Mondays* and *Thursdays*, between Six and Seven in the Evening. And the King order'd me to go to Mr. *Carol*, Secretary to the late Queen; and Col. *Parker* went with me, and he order'd me ten *Lewidores*, and Mr. *Hare* as much; which Mr. *Carol* gave us. And if we were Wind-bound at *Calais*, we were to apply to the President of *Calais*, to be furnish'd with what we wanted. And we staying at *Calais* for a Wind, our Charges were born by the President there. We Landed in *Romney-Marsh*, and came from thence to *London*; and went to look for Sir *George Barclay* in *Covent-Garden*, but could not see him. But one Mr. *Berkenhead* meeting my Comrade next Day, said, Sir *George Barclay* waited to see us; and appointed us where to meet him. Sir *George* told us, he had no Money for us then, but a few Days after sent us Five Guineas, which was for a Months Subsistence, at Five Shillings a Day; Guineas going then at Thirty Shillings. And afterwards, when Major *Holmes* deliver'd the Horse, upon *Saturday* the 15th, we had another Guinea; that made up what we had Six Shillings a Day, when we had Horses; and Five Shillings a Day when we had none. And as for Mr. *Lowick*, the first *Saturday* which was design'd for the Assassination, I happen'd to be at Mr. *Counter's* Lodgings in *Holbourn*, a Confectioner; and there I saw Mr. *Lowick* come in.

Mr. *Conyers*. Who Lodg'd there, pray Sir?

Harris. Sir *George Barclay* and Mr. *Counter* had Lodgings there; and Mr. *Lowick* came in there; but I think he went out presently again. The next Week, I met Mr. *Lowick* in *Red-Lyon Fields*, and discoursed with him there about this Matter; and told him what a barbarous Thing it was, that we should be the Murderers of the Prince of *Orange*. He did agree it was so; but in conclusion, Mr. *Lowick* said, He would obey Orders: And he said, he was sure Sir *George Barclay* would not do it without Orders. That Day, as we were walking, we met Sir *George Barclay* and Major *Holmes* on Horseback, and spoke to them; and Mr. *Lowick* told me the Thing was discover'd, and his Name,

His Evidence of the Prisoner's being privy to the Assassination, and his resolution to obey Orders, and assist in it.

and other Gentlemen's, were given in, as one *Harrison* had told him; and advis'd him not to lie in his Lodgings; and believ'd it would not be safe for the rest to lie in their Lodgings.

On *Saturday* the 22^d, We Din'd at the *Castle* at the end of *Red-Lyon-Street*; and being in a Sweat, Mr. *Lowick* ask'd me what made me so; I told him I had been getting Capt. *Rookwood's* Party ready: And I told him (laughing) that Capt. *Rookwood* said, I should be his *Aid de Camp*, and so I was getting his Men together. Says Mr. *Lowick* to me, You may very well do it, for you have Six Shillings a Day, and I have nothing; and yet brought a couple of Men at my own Charge; and their Horses cannot be discharg'd unless I go. I believe he paid for them, and they were waiting at a House till he came.

Mr. *Conyers*. Why were they to be discharg'd that Day?

Harris. Because Capt. *Rookwood* had told him, that the Prince of *Orange* did not go out that Day.

L. C. J. When was it you spoke with Mr. *Lowick* about Murdering the King?

Harris. It was *Monday*, *Tuesday*, *Wednesday*, or *Thursday*, after the first *Saturday*; I cannot be positive what Day it was.

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Mr. *Mompesson*. Did you see any of Sir *George Barclay's* Orders?

Harris. No, I did not, I was to follow his Orders; but what Orders he had, I cannot tell.

Mr. *Mompesson*. Did Sir *George Barclay* give the Prisoner any Orders?

Harris. I don't tell you he did.

Then Mr. *Bertram* was Sworn.

Mr. *Conyers*. Pray give an Account how far the Prisoner was concern'd in the intended Assassination?

Bertram deposes the Prisoner desir'd him to espouse something that was in agitation.

Bertram. About the beginning of *February* last, Major *Lowick* ask'd me if I would espouse a Thing with him, that might be for my Advantage; and I told him, I thought I might espouse any thing that he thought fit to engage in; and he desir'd me to ask no more Questions, but it went on 'till the 14th of *February*, when he desir'd me to

to be at his Lodgings at Twelve a Clock. I was so, and he took me up to his Chamber, and told me, he believ'd they should ride out in a little time. And he told me he believ'd the King was to be seiz'd in his Coach: And he gave me a Guinea to buy me Necessaries. He desir'd me not to be out of the Way; and the next Morning I was to meet him at the Purl-House in *Hart-street*. I did not meet him; and the next time I saw him, he ask'd me why I did not meet him according to his appointment: And he said, he believ'd, if the King had been in the Field, I would have done the same. And I have not seen him since, till I saw him at the Bar.

That the 14th of February, he order'd the Deponent to meet him the next Morning, and told him the King was to be seiz'd, and gave him Money to buy Necessaries. And reprimanded him for disappointing him.

Att. Gen. Did he not tell you what the Design was, you were to go about?

Bertram. He did not tell me of any other Design, than as I tell you; for he believ'd I knew of it; I thought so at least. The first time I knew of it, was from Mr. *Charnock*.

Att. Gen. Was this Money given you for Charity? Or for any other use? And to what purpose?

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Bertram. Sir, He has given me Money several times.

Lowick. Did not I give your Wife a Guinea, two Months before this?

Bertram. Yes, Sir; I acknowledge I was inform'd you did.

Att. Gen. What made him so kind to you?

Bertram. We were both born in a Town; and, I believe, near related.

Sol. Gen. When he gave you that Guinea, Did not he speak any thing of a Horse that was to be provided for you?

Bertram. Not a Word; I never did see a Horse upon that Account, nor was I Master of a Horse: Nor was I told I should have a Horse in any respect whatsoever.

Juryman. Did you understand what was meant by the riding out suddenly?

Bertram. I did believe it was about seizing and killing the King; and I did think it not to be lawful, and therefore did not meet him.

Lowick. If you please to give an Account of my Character, whether ever I was Guilty of any bloody Thing?

Gives the Prisoner a great Character.

Bertram. I have known him these Twenty Years: He had always the Character of a good Man, and was always ready to serve any Man in his Necessities, and to do good: He has the best Character of all Mankind.

L. C. J. What was his Way of Living?

Bertram. He was bred a Soldier, and was in *Ireland*, in the Service of King *James*.

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Mr. Mompeffon. Was he accounted of a cruel or bloody Nature? Did you never know that he sav'd any Peoples Lives?

Bertram. I was not in that Action my self, but all that were in it, said, that he was favourable, and did save Peoples Lives; particularly one Capt. *Harlow*. It was a Fortnight before the Business of the *Boyne*, upon a Sunday Morning, that they took those Prisoners: And he did persuade several Parties that he commanded, to decline killing as much as they could. This I heard from all that were in it, and from the Prisoners.

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Then Capt. *Fisher* was call'd, and he did not appear at first; the Court staid almost an Hour for him, but he came at length.

Sol. Gen. Pray, Capt. *Fisher*, Do you know Mr. *Lowick*, the Prisoner at the Bar?

Capt. Fisher. I have not talk'd with Mr. *Lowick* since the 8th of *February*; and then, he said, he would be ready to serve his Master, to the utmost of his Power.

L. C. J. What Master?

Capt. Fisher. King *James*; but he did not name any particular Service.

Att. Gen. Pray give an Account, What you know of this bloody Design?

Capt. Fisher. I was concern'd in it; we were to fall upon the Prince of *Orange*: It was to have been done the 15th of *February*, and we met accordingly the 14th; but the King not going abroad, it was put off.

L. C. J. Who met on the 14th?

Capt.

Capt. *Fisher*. I met only Mr. *Harrison* and Sir *George Barclay*, then it was put off 'till the 22d. Upon the 21st, We met at the *Three Tuns* in *Holbourn*, and from thence we came to the *Sun Tavern* in the *Strand*; and there was no body but Mr. *Harrison* and I together, and Sir *George Barclay* came to us: I believe there were about Fourteen or Sixteen in the House. There Sir *George Barclay* told me, Mr. *Lowick* was to meet me and two more, at an Inn by *St. Giles's Pound*; and that we were to go together to seize the Prince of *Orange*, the 22d: But I did not meet him, it being put off by the King's not going abroad.

Fisher deposes that Sir *George Barclay* told him Mr. *Lowick* would meet him and two more, next Day, in order to seize on the Prince of *Orange*.

L. C. J. This does not affect Mr. *Lowick* at all.

Att. Gen. At that time which you speak of, the 8th of *February*, Had you any knowledge of the Assassination?

Capt. *Fisher*. There was no Assassination at that time; at least, it was not then declar'd: But we talk'd of the Preparations for the King's coming to *England*.

Mr. *Comper*. Had you no Discourse about an Act of Parliament?

Capt. *Fisher*. Mr. *Lowick* said, Nothing that was Treasonable, should be discours'd of, before above One at a time; for there was an Act of Parliament on Foot, that under two Witnesses nothing should effect a Man's Life in Treason.

The Council for the Prisoner insisted, That here were not two Witnesses, according to the Act of Parliament; and then call'd some Witnesses to the Prisoner's Reputation.

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Mrs. *York* was Sworn.

She depos'd, That she had known him Twelve or Fourteen Years: That he lodg'd at her House, and was of a very obliging, peaceable Behaviour; and had a general good Character.

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Mrs. *Mosely* was Sworn.

She depos'd, She had known the Prisoner these Twenty Years; that he was a peaceable, virtuous, honest man; and had the best Character of any Man she was ever acquainted with.

The Prisoner denies all that had been testified against in him.

Lowick. My Lord, As to this Business that I stand accus'd of, the Assassination, I know nothing

in the World of it; nor ever did, directly or indirectly.

L. C. J. You were at Sir *George Barclay's*, at the Confectioner's in *Holbourn*. And it is sworn, he came over upon such a Design. Then you were with Mr. *Harris*, in *Red-Lyon-Fields*; and there he was speaking to you of the Horridness of the Design, that was to be executed upon the King's Person, the *Saturday* before; and he told you he did dislike it: And thereupon you answer'd, That you would obey Orders; and that Sir *George Barclay* had Orders for it, otherwise he would not do it,

Lowick. Sir *George Barclay* never spoke one Word of it to me.

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L. C. J. Then when you Din'd together, *Saturday* the 22d, What were those two Men that could not be discharg'd without you?

Lowick. My Lord, I know nothing in the World of two Men.

L. C. J. And as to *Bertram*, What Design was that you were to ingage him in, and he was to ask no Questions?

Lowick. My Lord, He is a poor Man, and my Country-man; and I have help'd to subsist him and his Family, these Seven Years; and given him both Cloaths and Money.

L. C. J. When he came to your Lodging, on *Friday* the 14th of *February*, and you told him the King was to be seiz'd in his Coach; and you said, We are to ride out suddenly, and appointed him to meet the next Morning; and afterwards blaim'd him for not coming. I would have you give an Answer to these Things if you can?

Lowick. I remember nothing in the World of it, I assure you; and to the best of my remembrance, I did not see him in two Days after.

Then Mr. *Attorney* repeated part of the Evidence; and insisted, That there were two positive Witnesses, as the Law requir'd.

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My Lord Chief Justice summ'd up the Evidence, and directed the Jury, " That two Witnesses to
" one Overt-Act, were not necessary; but one
" Witness to one, and another to another Overt-
" Act, was sufficient. That it was true, in case

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" of

“ of Life they were not to put any forc’d and vio- Express
 “ lent Constructions upon any Words or Dis- Words not
 “ courses: But if the Evidence be plain and clear, necessary to
 “ though the Prisoner did not say, in express convict a
 “ Words, he design’d to assassinate His Majesty, Man, but if
 “ yet, if upon the whole Discourse that pass’d be- from the
 “ tween *Bertram* and the Prisoner, it appeared whole Dis-
 “ plainly, clearly, and satisfactorily to them, that course the Ju-
 “ he did consent and agree to this Design, or was ry were satis-
 “ engaged in it; then *Bertram* was another Wit- fied he was
 “ ness to prove him guilty besides *Harris*, which engaged in
 “ was as much as the Law required. the Design it
 “ was sufficient.

The Jury withdrew, and return’d in about half The Prisoner
 an Hour, and brought the Prisoner in *Guilty*. convicted.

Then *Cranburn*, *Rookwood*, and *Lowick* were Page 173.
 set to the Bar; and it being demanded of them Sentence pas-
 what they could say in Arrest of Judgment, and sed on *Cran-*
 they having nothing more to offer than what had *burn*, *Rook-*
 been urg’d before, the Lord Chief Justice pro- *wood*, and *Lo-*
 nounc’d Sentence upon them as usual, in Cases of *wick*.
 High Treason.

They desir’d the Court that their Friends, and Their Friends
 such Divines as they desir’d, might come to them. admitted to

The Court directed them to give in the Names come to them
 of the Persons they desir’d should attend them, but not in
 and they should have a Warrant for it; but it must private.
 be in the Presence of the Keeper.

The Tryal of ALEXANDER KNIGHTLEY. Page 213.

De termino pasche, Die Jovis 30 Aprilis. 8 W. 3.
Anno Domini 1696. B. R.

THIS Day the Prisoner was brought from The Indict-
Newgate, to the *King’s-Bench* Bar, by Writ ment mov’d
 of *Habeas Corpus*, to be arraign’d upon an Indict- by *Certiorari*
 ment of High Treason, found against him at the into the
 Sessions of *Oyer and Terminer*, for the County of *King’s-Bench*.
Middlesex; which Indictment was remov’d into
 the *King’s-Bench*, by *Certiorari*.

Note, The Prisoner had been before indicted,
 together with *Rookwood*, *Cranburn*, and *Lowick*,

by a wrong Christian-Name, viz. Christopher, upon which he was not tried for that Reason.

It was for High Treason, in compassing the King's Death,

Overt-Acts consulting to assassinate the King.

Providing Arms.

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And going to view the Ground where the intended Assassination was to be.

The Prisoner pleads Not Guilty.

A *Venire facias* issued for the Jury as in Civil Causes, where there must be Fifteen Days between the *Tesse* and the Return.

The Indictment sets forth, " That the Prisoner, on the 10th Day of February, in the 7th Year of the King that now is, and divers other Days and Times, as well before as after, at the Parish of St. Paul's Covent-Garden, in the County of Middlesex; did compass and intend the Death of the said King, and the Destruction of his Subjects: And to that End, did consult and agree with divers other Traytors, to the Jurors unknown, by lying in wait, to assassinate and murder the said King; and did consent and agree with the said Traytors, that Forty Horsemen Arm'd, whereof the said Alexander Knightley should be one, should set upon the said King in his Coach, and upon the Guards that attended him; in order so to assassinate and murder him: And that the said Alexander Knightley did procure, and provide Horses, Arms, and Ammunition for these Purposes. And further, that the said Alexander Knightley, together with one Edward King, lately attainted of High Treason, did go to the Place where the intended Assassination was to be; to view and observe the Conveniency of the Place: And upon their Return, did communicate and impart his Observations thereof, to the said other Traytors and Conspirators, contrary to the Duty of his Allegiance, the King's Peace, &c. To which Indictment the Prisoner pleaded Not Guilty.

L. C. J. Holt. I think you cannot try it 'till Wednesday Fortnight; It being upon a *Certiorari*, the *Venire facias* must be returnable upon a common Day; and there must be Fifteen Days between the *Tesse* and the Return.

Att. Gen. May it not be Tuesday then, that the Jury appear.

L. C. J. You cannot have it before Wednesday, for that is the Return Day. Then the Prisoner was carried back to Newgate.

Die

Die Mercurii 20 Maii, 1696. B. R.

Mr. *Knightley*, the Prisoner, being this Day brought to the Bar, he retracted his former Plea, and pleaded *Guilty*.

The Prisoner retracts his Plea, and pleads *Guilty*.

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Att. Gen. My Lord, We desire, since he relinquishes his Plea of *Not Guilty*, that you will Record his Confession: And since he has confess'd his Indictment, We have nothing more to do, but to wait the Judgment of the Court.

L. C. J. We cannot, by the Course of the Court, give Judgment now, for after a Person is convicted here, whether by Confession or Verdict, he ought to have Four Days, from the Time of such Confession or Verdict, to move in Arrest of Judgment, if there be so many Days of the Term remaining: If there be not so many Days of the Term remaining, then the longest Time that can be had in the Term is allow'd. In *Stanley's Case* it was otherwise practis'd, Judgment was given the same Day; that was in the Time of the Popish Plot, and is a Case not to be imitated; because not justified by any Precedent before or since; but it has been always observ'd, to have four juridical Days for moving in Arrest of Judgment, if so many remain in the Term.

Judgment cannot be given 'till Four Days after Conviction in the *King's-Bench*, if there be so many Days remaining of the Term.

Die Luna 25 Die Maii, 1696.

This being the last Day of the Term, the Prisoner was brought from *Newgate* to the *King's-Bench* Bar; and Mr. *Attorney* demanded Judgment against him: And being ask'd what he had to say in Arrest of Judgment, he answer'd, He had nothing more to say than he had said. Then my Lord Chief Justice, pronounced Judgment upon him as a Traytor, and he was remanded to *Newgate*.

Sentence passed the last Day of the Term.

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The

Page 174.

*The Tryal of Mr. PETER COOK, at the
Sessions-House in the Old-Baily; Die
Sabbati 9 Maii. 8 W. 3. Anno 1696.*

The Indict-
ment for High
Treason, in
compassing the
King's Death,
and adhering
to the King's
Enemies.

The Overt-
Acts.
For consult-
ing concern-
ing an Invasi-
on and Insur-
rection, and
sending to in-
vite over Fo-
reign Troops.

And provi-
ding Arms,
&c.

Want of Free-
Hold admit-
ted a Cause
of Challenge
in the City.

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THE Indictment sets forth, " That whereas
" there has been an open and cruel War,
" for a long time, and is still carried on, between
" His Majesty King *William* and the *French* King,
" He, the said *Peter Cook*, being a Subject of our
" said Lord the King that now is, of this his King-
" dom of *England*; and well knowing the Premi-
" ses, as a false Traytor, the 1st Day of *July*,
" in the 7th Year of the said King, and divers
" Days and Times, as well before as after, at
" *London*, in the Parish of *St. Michael Cornhill*,
" in the Ward of *Lime-street*, did maliciously,
" and traiterously compass, and intend to depose
" and deprive our said Lord the King, of the Ti-
" tle, Honour, and Dignity of the Imperial
" Crown of this Realm, and to put him to Death.
" And further, that the said *Peter Cook*, at the
" Time and Place aforesaid, did adhere to, and
" was assisting to the King's Enemies: And to ful-
" fil these Treasons, he did consult and agree with
" one *Rob. Charnock*, *Sir John Friend*, and *Sir Wil-*
" *liam Parkins*, (already attainted) and several
" other Traytors, to send over to the late King
" *James*, to perswade the *French* King to send
" over Soldiers and Arms to invade this Kingdom,
" and to raise an Insurrection and Rebellion in it,
" and to deprive and put the King to Death.
" And to compleat these Treasons, it further sets
" forth, That the Prisoner at the Bar did provide
" several Arms and Horses, &c. contrary to the
" Duty of his Allegiance, the King's Peace, &c.

The Jurors being call'd, the Prisoner demand-
ed of them, as they came to the Book, if they
were Free-Holders; and Mr. *Attorney* and the
Court did agree, that such of them as had no
Free-Hold in *London*, should be set aside.

The

The Prisoner also excepted against several others, for having been upon Sir *John Friend's* Jury, who had been convicted of the same Treason; and for that the Witnesses at that Tryal, had mentioned the Prisoner as being present at those very Consults, where Sir *John Friend* was; but this was over-ruled, as no good Cause of Challenge; and then the Prisoner challenged peremptorily, 'till he had challenged Thirty Five.

Jurors having convicted another for the same Treason no cause of Challenge.

Several others were set aside, their Christian-Names being wrong.

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John Simmons was challenged for the King, and the Pannel being gone through the first Time, *Thomas Clark*, one of the Defaulters, was call'd.

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Sir *Bar. Shower*. If there be a Default of the Jury, and the King's Council have challenged any one, they ought to shew their Cause; therefore we desire they may shew their Cause, why they challenged Mr. *Simmons*.

King's Council must shew Cause where there is a Default of the Jurors.

L. C. J. *Treby*. The King has Power to challenge without shewing Cause, 'till the Pannel be gone through; but if there be a Default of Jurors when the King challenges, the King's Council must shew Cause.

Sir *Bar. Shower*. Here is a Default of Jurors my Lord.

L. C. J. He appears, and no body is recorded absolutely a Defaulter, if he comes in time enough to be Sworn.

Sir *John Holt*,

Then *Thomas Clark* was order'd to be Sworn: But still there being a Default of the Jurors, the Jurors were ordered to be estreated, and greater Issues order'd to be return'd next Time; and the Court not being able to proceed for want of a Jury, they order'd another Pannel to be ready the *Wednesday* following, to which time they adjourned.

The Tryal put off for want of Jurors.

Die Mercurii 13 Maii. 8 W. 3. 1696.

The Court being sat, Mr. Serj. *Darnal* desir'd, before the Jury were call'd, to move against this new Pannel.

Serj.

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The Prisoner's Council insist, that a new Pannel could not be directed, but there should have been a *Tales* awarded. In Civil Causes there ought not to be more on the *Tales*, than on the principal Pannel.

Serj. *Darnal*. My Lord, the Question is, Whether, as this Case is, the Prisoner has had a Copy of the Pannel of this Jury, according as the late Law requires? He had a Copy of the former Pannel, and upon that Pannel Nine were Sworn, and their Names all enter'd on Record; and made Parcel of the Record: Now my Lord, to add a new Pannel, upon which Twelve more shall be Sworn, and all this appear upon Record; and the Prisoner try'd upon the last Pannel, Shall not this be Error? In *Stamford's Pleas of the Crown*, p. 155, 156, it is said, Whenever, upon the Principal Pannel, all the Jury does not appear, or so many of them do not, that there are not enough left to make a Jury, (which is our very Case;) Then the Pannel shall not be quash'd or abated, but a *Tales* granted: So is the 14 *Hen. VII. c. 7*. There the Question was, Whether there should be a greater Number return'd upon the *Tales*, than were in the Principal Pannel? And it was agreed, that where it is between Party and Party, (where Life is not concerned) it shall not; but in Cases of Life, where the Prisoner has Power to challenge Thirty Five peremptorily, the Judge may award as many upon the *Tales* as he pleases: So that if this old Pannel is not abated, and could not be quash'd, and a *Tales* might be granted to consist of any Number; I conceive the Prisoner cannot be try'd upon this Pannel, but it will be erroneous.

Sir *Bar. Shower*. We insist upon it, that the late Act intends, That not only the Prisoner should have a Copy of the Pannel return'd by the Sheriff, but that we should be tryed by the Pannel we had a Copy of at first: For it is not said a Copy *toties quoties*, the Court shall think fit to award a Precept for a new Pannel, but the Words of the Act are, *a Copy of the Jury duly returned by the Sheriff*: Now this we had, and your Lordship knows, it is not a return'd Pannel 'till it be in Court; and then it becomes part of the Record: I do agree, the Justices in some Cases have quash'd and set aside Pannels and Juries and order'd new ones; and I confess there was an extraordinary Case

The Prisoner ought to be try'd by the first Pannel return'd by the late Act.

Case in the time of King *Charles II.* which was upon the Indictment against *Whitebread*, where after the Jury charg'd and Evidence given, t^{he} Jury was discharg'd, and a new Pannel made the next Sessions, upon which Mr. *Whitebread* was try'd and convicted; but great Complaints were made of that Practice, and few Precedents can be shewn of the like: Pannels may be quash'd for some Causes; but for a Default of Jurors no Pannel was ever quash'd: Then say we, if it be not quash'd, this Pannel must continue. It is not within the Act of Parliament that gives the Justices Power to make a new Pannel, as in the Case of a Grand Jury, when they are guilty of Concealments, &c. So that we take it, there is no difference between this Case, as before Justices of Goal-Delivery and other Justices: My Lord, there is a Case that does warrant that Opinion of a *Tales* in a Case of Felony; and if there may be a *Tales* then, there may be an *Habeas Corpora*; and there are Directions how the Jury shall be Sworn again upon their Appearance, upon the *Habeas Corpora*; and that is *Wharton's Case*, in *Yelverton* 23.

Whether a Jury may be discharg'd after they are once charg'd with the Prisoner.

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Just. *Powell*. Jun. Do not dispute that, It is plain, that a *Tales* does lie in Felony, upon a Commission of *Oyer* and *Terminer*, But can you shew me Sir *Bartholomew* any where, that upon a Commission of Goal-Delivery a *Tales* does lie?

No *Tales* does lie on a Commission of Goal-Delivery.

Sir *Bar. Shower*. Sir, I can only shew the Reason of the Laws, and I do not find that does contradict what we now contend for.

Serj. *Darnal*. There is but One in Threescore and Ten that can be Sworn now, of them that were Sworn before, and there were Nine of them then Sworn.

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L. C. J. *Treby*. What do you complain of? They that are return'd, are put in the same Order as they were before; they that were Sworn were, for the most part, late in the Pannel then, and so they are now. I do not find any thing done to the Prejudice of the Prisoner.

Serj. *Darnal*. If the Christian-Names had not been mistaken, there had been, perhaps, enough to have been Sworn.

L. C. J.

L. C. J. *Treby*. That's a good Argument for a new Pannel; because the Christian Names were mistaken.

Just. *Powell*. It was by Defect of Jurors, and therefore there was an absolute Necessity for a new Pannel.

L. C. J. *Treby*. I am of the same Opinion—*Wharton's Case* is well known: It was much cited as to another Point in *Bushe's Case*. It was a Tryal at the *King's Bench Bar* at *Westminster*, by a Jury of *Kent*, upon an Indictment of Murder.—And I think you say the Case of *Hen. VII.* was between Party and Party in Appeal. And I believe *Stamford's Discourse*, in the Place cited, relates chiefly to Appeals.—I shall not deny that a *Tales* may possibly be upon an Indictment, before Justices of *Oyer* and *Terminer*; tho' 'tis not usual, nor do you shew, or our experienced Clerks know any such Precedent. I agree that in the mentioned Case, a *Tales* was proper; for in both Cases (*viz.* of Appeal and Indictment removed into the *King's Bench*) the Process for the Jury was as it ought to be by Writs of *Venire facias*, &c. Upon which a full Jury not appearing, there must be a *Tales*.—As to the Objection that the old Pannel is Parcel of the Record; here is not, nor will be, nay, there ought not to be any Pannel purporting to be returned for the trying of Mr. *Cook*, or any particular Prisoners. For the Precept in this Case, is (not like a *Venire facias*, which always respects a particular Issue, between Parties therein named) general, requiring the Sheriff to return Jurors enough to try all the Prisoners, not naming any. And the Return, which is the Answer to it by a Pannel or Pannels, is as general: The Title of every Pannel being *Nomina Jurator ad triandum pro Domino Rege*, and no more; or *Nomina Juratorum ad triandum in Dominum Regem, & Prisonar ad Barram*, without naming any of the Prisoners; and it were absurd if it should be otherwise: For the Precept goes to the Sheriff before the Sessions, and his Return is suppos'd to be made at the beginning of the Sessions, when it is not known who of the Prisoners will

On Appeals and Indictments mov'd into th *King's Bench*, there is a *Venire*, and consequently there may be a *Tales* awarded.
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How a Precept differs from a *Venire*.

will be indicted, or who will plead: As to the Note the Clerk makes of the Names of them that are Sworn, it is no part of the Record, 'till a full Jury is Sworn, who try the Prisoner; and then indeed the Clerks must, from his Notes or Memory, enter the Names of all the Twelve on the Record of the Indictment in this manner, viz. Just after the *Ideo immediate veniet, inde jurata coram prefat' Justic', &c.* adding *Et Juratores jurata illius, &c. sciet A. B. &c. Dicunt, &c.* And it is thus, only that the Names of those that are Sworn come to be of Record: It is this Entry upon the Body of the Indictment alone that is the Record, and shews who were the Jurors Sworn to try the Prisoner: — Nor is the old Pannel fil'd among the Records, but when such a Pannel does not produce a Jury, the Clerks throw it away as useless: It is not every thing that passes in Court in order to a Record, that comes to be so. A frivolous Plea, that is rejected, is not recorded. A Presentment, or Bill of Indictment, before it is found, is not a Record: And if an *Ignoramus* is return'd upon a Bill of Indictment, it never can be a Record; and thereupon the Clerks sometimes do throw it way; though sometimes they keep it and put it on the File, only taking Care to cross it; but if they do forget to cross it, yet it is no Record. — By all this it appears how great the Difference is, between a Precept and Pannels in this Court, and a *Venire facias* and a Pannel return'd thereupon, which ever issued after Issue join'd, and doth always mention the particular Parties and Matter it relates to; and is a Record and a Ground for a *Habeas Corpora*, with a *Tales* to be returnable at a certain future Day: But in this Case, in this Court, it is quite otherwise.

Sir Bar. Shower. Then my Lord, since there is a new Pannel, We hope we stand in the same Condition upon the Act of Parliament, to take Exceptions to the Indictment, before this Jury Sworn, as we did before the other Jury Sworn; since all that is set aside.

L. C. J. Yes truly, I think that may be.

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The Pannel
no Part of
the Record,
'till the
Twelve Ju-
rors are
Sworn and en-
tered on the
Indictment.

Where the Ju-
ry return *ig-
noramus*, the
Bill is not re-
corded.

A *Venire* is e-
ver after Issue
join'd, a Pre-
cept before.

The Priso-
ner's Council
admitted to
take Excepti-
ons to the In-
dictment, be-
fore another
Jury Sworn.

Sir

1. Exception.

Sir Bar. Shower. My Lord, we have such an Exception to the chief Overt-Act laid in the Indictment; as we presume, is sufficient to set aside the Indictment: It is said, that Mr. Cook did agree with other Traytors to send Mr. Charnock into France, to the said late King James; and King James is never mentioned before in the Indictment.

Sir Tho. Tre-
vor.

Att. Gen. My Lord, It is Jacobo secundo numero Regi, and not dicto.

Sir Bar. Shower. Then they cannot try us now, for we ought to have a true Copy of the Indictment.

Att. Gen. They cannot take this Exception now, after they have pleaded; for by pleading to it they have admitted it a true Copy.

2. Exception.
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Sir Bar. Shower. There is another Exception: It is said, That Peter Cook did meet with Sir John Friend, and Sir William Parkins, &c. and did then, and there consult: And further, did agree with the said Traytors to send Charnock into France; and it does not say who did agree: So that this is without a Nominative Case, and therefore, we say, the Indictment cannot hold.

Just. Powell. I do not see but here is as much certainty as can be: That he did consult, and further, the same Day did agree, with the same Persons; it is not necessary to repeat the Words, ipse idem Petrus, over again.

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Att. Gen. And as to Sir Bartholomew Shower's first Objection, his Copy is right too; and he mistook the Place.

Then the Prisoner was set to the Bar, and the Jury was call'd.

If a Juror has
said the Pri-
soner is guilty
'tis a good
Cause of
Challenge.

Cook. My Lord, before the Jury are Sworn: I am advis'd, that if any of the Jury have said already that I am guilty, or they will find me guilty; or I shall suffer, or be hang'd, or the like; they are not fit to be on the Jury.

L. C. J. You say right; it is a good Cause of Challenge.

Then Mr. William Walker was call'd.

Cook. Sir, Have you said any such Thing, that you believe me guilty.

Att. Gen.

Att. Gen. If you make any such Objection, you must prove it by others, and not out of the Jurymen's Mouth; because it would make him Guilty of a Misdemeanour.

But it must be prov'd by others, and not by examining the Juror.

L. C. J. Treby. A Jurymen shall not answer any Question, where the answer may subject him to Reproach. And I think it a scandalous Misbehaviour, if not Criminal, to prejudge any one before he is Try'd. Besides, 'tis to ask a Jurymen, Whether he have not defam'd or slander'd him in the highest degree?

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Serj. Darnal. What is more common, when one hears a Fact reported of such a one; to say, I am of Opinion he is Guilty, and he will be hang'd, &c. and yet there is no Crime in this?

L. C. J. If upon a Report of clear Evidence, a Man should say, *Supposing this to be true, such a Man is Guilty, and I should find him so, if I were of his Jury?* This is not Criminal, nor may not be sufficient to set aside a Juror: For it imports, that if the Evidence should not be true and clear, he would acquit him. But for one to declare and affirm positively, that such a Prisoner is Guilty, and he will find him so, let the Evidence be what it will: This, I think, may be a Misdemeanour, and punishable.

Just. Powell. In a Civil Case, it would be a good Cause of Challenge, if a Man have given his Opinion about a Right one way or other; and, I believe, it may be ask'd, upon a *Voir dire*: But a Man cannot be oblig'd to charge himself with what is Criminal.

In a Civil Case he may be examin'd, if he has given his Opinion of the Right.

Serj. Darnal. Our Objection is not because it is an Offence to declare a Man's Opinion upon a Fact reported, but because it shews he has a settled Opinion of the Person's Guilt; and therefore he is not so equal a Man to Try him, as he ought to be.

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L. C. J. Truly, I think, it reflects both Dishonesty and Dishonour upon him; and therefore these Questions ought not to be ask'd.

Then the Prisoner Challeng'd Mr. *Walker* peremptorily.

Admitted he might ask a Juror if he

Sir *B. Shower* insisted, that they might ask a Jurymen, if he had Ten Pound *per Ann.* Freehold

had a Freehold, in a Criminal Case.

in the City of London? (Which the Court admitted.)

Mr. Carbonel and Mr. Forster being call'd, said they had no Freehold.

Att. Gen. My Lord, We desire they may be sworn, if they have a Freehold or not?

Cl. of the Arr. Have you, or any Body in trust for you, a Freehold in London, of the Value of Ten Pounds a Year?

Mr. Carbonel. No, Sir.—— Then Mr. Foster was Sworn, and depos'd in like manner; as did several others.

He may ask a Juror, if he was on the Grand Jury, and a good Cause of Challenge if he was.

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Porter's Evidence of the Conspirators meeting and consulting concerning an Invasion and Insurrection, and sending Charnock to France.

My Lord Aylesbury and Lord Montgomery in this Conspiracy.

The Prisoner, also, was admitted to demand of the Jury, as they came to the Book, Whether they had serv'd on the Grand Jury that found the Bill against him? And the Court declar'd, That an Indicter ought not to be a Tryer.

After several had been set aside for want of Freehold, and several others, for that they were misnam'd; and the Prisoner had challeng'd his full Number peremptorily. At length a Jury was sworn, and Proclamation made for Evidence, as usual: And the Jury was charg'd with the Prisoner. And, Mr. Mompeyson open'd the Indictment. Then Mr. Cook desir'd the Witnesses might be examin'd apart, which the Court agreed to; but said, he could not demand such a Favour.—— And Mr. Attorney open'd the Nature and Course of the Evidence.

After which, Capt. Porter was call'd, and sworn.

Sol. Gen. Pray give an Account of the Company, that were at the King's Head in Leadenhall-street? the Time when, and what pass'd there?

Capt. Porter. We had two Meetings last Year, the first in May, and the other the latter end of May, or the beginning of June. The first was at the King's Head in Leadenhall-street; where were my Lord Aylesbury, my Lord Montgomery, Sir John Fenwick, Sir John Friend, Sir William Parkins, Mr. Charnock, Mr. Cook (the Prisoner,) and my self; and Mr. Goodman came in after Dinner. There we consulted, which was the best Way, and the speediest, to restore King James: And several Proposals were made. At length it was agreed to send

send Mr. *Charnock* to King *James*, to desire him, to borrow of the *French* King, Ten Thousand Men, Eight Thousand Foot, One Thousand Horse, and One Thousand Dragoons, to land in *England*, and assist in the King's Restoration. Says Mr. *Charnock* thereupon, This, the King can do without your sending, and I would not go upon a foolish Errand: What will you do to assist in this Matter? The Company said, He might promise King *James*, that if he pleas'd to acquaint them, with the Time and Place of his Landing, they would not fail to meet him with a Body of Two Thousand Horse?

Att. Gen. What Signs were there of there Agreement? Did they severally stand up and declare it, or how?

Porter. My Lord *Aylesbury* and Sir *John Fenwick* rose up, and desir'd Mr. *Charnock* he would go with this Message. And when Capt. *Charnock* ask'd the Question of them severally, Whether he might assure the King, what they resolv'd on? Every one said, Yes, you may: And, particularly, Mr. *Cook* kneel'd upon a Chair, and said, Yes, you may.

Sol. Gen. Do you remember the Meeting at Mrs. *Mountjoy's*, and the Occasion of your meeting there?

Porter. Capt. *Charnock* desir'd another Meeting, to see if the Gentlemen persisted in their former Resolution; and therefore we met again at Mrs. *Mountjoy's*, Eight or Ten Days after: Where were most of the Company that were at the first Meeting, particularly the Prisoner. And they there assur'd Capt. *Charnock*, that they held their first Resolution, and would stand to what was agreed at the first Meeting. And Mr. *Charnock* told me, he would go in two or three Days; and I believe he did. And two or three Days after, I was carried to *Newgate*, for the Riot in *Drury Lane*: Mr. *Charnock* came to see me, and told me, he had been in *France*; and that King *James* thank'd us for our kind Offer, but the *French* King could not spare so many Men that Year. And that he had acquainted my Lord *Aylesbury*, and the rest of the

Gentlemen who sent him over, with the several Messages he was charg'd with from the King.

L. C. J. Treby. Who was present at the second Meeting?

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Porter. The Lord *Aylesbury*, Sir *John Friend*, Sir *William Parkins*, Mr. *Charnock*, Mr. *Cook*, and my self. I can't say whether my Lord *Montgomery* or *Goodman* were there.

Att. Gen. Mr. Porter. You were concern'd in the Assassination; Pray, What Security did you propose to your selves after it was over?

Porter. Sir *George Barclay* bid us fear nothing; for, he said, he had a Ship ready, and the King would be Landed in five or six Days; and if we could but keep our selves close so long, all would do well.

Mr. *Goodman* was call'd, and sworn.

Sol. Gen. Pray give an Account, what you know of the intended Invasion?

Goodman's Evidence to the same effect.

Goodman. About the middle of *May* last, Mr. *Porter* sent me Word, there was a Meeting of some Gentlemen of our Acquaintance, at the *King's Head* in *Leadenhall-street*; and desir'd I would be there, because it was about Business. I came after Dinner, and sent in my Name, and Capt. *Porter* came out, and introduc'd me. There were my Lord *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Parkins*, Sir *John Friend*, Capt. *Charnock*, and Mr. *Cook* the Prisoner. We consulted what Methods were properest to be taken, to facilitate the Restoration of King *James*; and agreed, That if King *James* could procure of the *French* King, Ten Thousand Men, viz. Eight Thousand Foot, One Thousand Horse, and One Thousand Dragoons, we would endeavour to meet him with as many Horse as we could raise, to sustain those Forces at their Landing. And we pitch'd upon Capt. *Charnock*, to send over with this Message. Mr. *Charnock* desir'd he might not be sent upon a foolish Errand, but that we would let him know exactly, what he was to say. And thereupon it was concluded by all, That the King might depend upon Two Thousand Horse at least. When the Number was fix'd, Capt. *Charnock* demanded,
If

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If we all consented, and he might assure the King, that this was our Resolution? Thereupon we all rose up, and said to him, *Yes, you may; Yes, you may;* every one for himself; and I remember particularly, Mr. Cook the Prisoner, kneel'd upon a Chair, and laid his Elbows upon the Table, when he said *Yes, you may.* Capt. Porter told me there was to be another Meeting, but I having Business in the City, was not there; but assur'd him, what had been promis'd on my part, I would be sure to make good.

Att. Gen. Did you see Mr. Charnock after he return'd?

Goodman. Yes; And he said the *French* King could not spare Men at that time. And that he had been with the several Gentlemen who sent him, with Complements from King *Jamos*; and Thanks for the Affection they had shewn.

Sir B. Shower. Was it after the 11th of June, you saw Mr. Charnock?

Goodman. I believe it was a Month after the 10th of June; and it was at his Lodgings in *Arun-del-street*.

Cook. Did you ever hear me speak Ten Words in your Life? Was you ever in my Company before, or since?

Goodman. Yes; I was in your Company at the *Cock* in *Bow-street*, where you came in accidentally. And as to the Consultation I have mention'd, I very well remember you express'd your Consent in the manner I have related.

Att. Gen. My Lord, We have done at present. Then Serj. *Darnal* open'd the Evidence on behalf of the Prisoner; and began with a Record of the Conviction of *Goodman*, for attempting to poison the Dukes of *Grafton* and *Northumberland*.

Sir B. Shower. Mr. *Burleigh*, Where is the Conviction of *Goodman*?

Burleigh. Here is a true Copy of it, I examin'd it with the Record, in the Treasury at *Westminster*.

L. C. J. Treby. Read the Record in *English*, to the Jury.

Cl. of the Arr. Reads.] Be it remember'd, that Sir Robert Sawyer, Knt. Attorney General of our Lord the King, &c.

Page 195.
The Prisoner produces a Record of a Conviction against Goodman, for attempting to poison the Dukes of *Grafton* and *Northumberland*.

Page 196,

The Infor-
mation a-
gainst Good-
man.

“ The Information sets forth, That *Cardell Goodman*, late of the Parish of *St. Martin's* in the
“ Fields, in the County of *Middlesex*, Gent. Being
“ a Person of a wicked and devilish Disposition, did,
“ on the 30th Day of *September*, in the 36th Year
“ of King *Charles* the 1st; at the Parish of *St. Mar-*
“ *tin's* aforesaid, unlawfully solicit, persuade, and
“ endeavour to procure, one *Alexander Amydei*,
“ to prepare and procure two Flasks of Florence
“ Wine, to be mix'd with deadly Poison; for the
“ poisoning the Right Noble, *Henry*, Duke of
“ *Grafton*, and *George*, Duke of *Northumberland*.
“ And did promise and agree, to give the said
“ *Alexander Amydei*, Forty pieces of Guinea
“ Gold, of the value of 40 *l.* for preparing the
“ said Wine. And in Case the aforesaid poison'd
“ Wine had its intended effect, and should occa-
“ sion the Death of the aforesaid Noble Dukes;
“ Then the said *Cardell Goodman*, did agree to pay
“ unto the said *Alexander Amydei*, the Sum of
“ 100 *l.* and maintain him beyond Sea, as long as
“ he liv'd. To the evil Example of others, and
“ against the King's Peace, &c.

Sir B. Shower. See the Verdict.

Clerk of the Arr. There was a Tryal at *Nisi Prius*; and the Jury Find that the said *Cardell Goodman* is Guilty of the Premises, in the Information specified.

Judgment to pay 1000 *l.* Fine, and be committed to the *Marshalsea* till paid; and to give Security for his good Behaviour during Life; and also give Security for the Peace; and particularly, towards the said Noble Dukes.

Att. Gen. I desire they may go on, and read the whole Record?

Clerk of the Arr. Reads.] And afterwards, &c. came the aforesaid Sir Robert Sawyer, Knt. Attorney General, and acknowledg'd that the said Cardell Goodman, has satisfied to our said Lord the King, the Judgment aforesaid. And therefore the said Cardell Goodman is acquitted, &c.

Then *Mr. Charles Edwards* was call'd, and appear'd upon a *Habeas Corpus* directed to the Keeper of *Newgate*, where he was Prisoner.

Mr;

Mr. Baker. What is he committed for?

Keeper. He is Committed for suspicion of Treason, and Treasonable Practices.

Mr. Baker. It seems, this Gentleman, was *Dun-dee's* Chaplain in *Scotland*.

Serj. Darnal. Pray tell what you have heard from Mr. Goodman, concerning the Prisoner at the Bar?

Page 197.

Edwards. Among other Discourse, asking Mr. Goodman, What Mr. Cook the Prisoner, was to be Try'd for? He told me, For being concern'd in sending Mr. Charnock into *France*: And that Capt. Porter and himself were to be the Witnesses. That Mr. Cook had sworn against him, but could not have his Pardon, because he would discover no body else. And, says he, *He, or I, must perish*; or, *He, or I, must suffer*: I think the Word was *suffer*; but, says he, 'tis a foolish thing to be hang'd. All that's said of a Man that is hang'd, is, That he hang'd handsomely, or he dy'd bravely.

Edwards's Evidence that he heard Goodman say, he or Cook must suffer.

Then Crawford, Huntley, and Cook, were call'd, and sworn.

Sir B. Shower. Mr. Crawford, Do you remember when my Lord of Aylesbury and Capt. Porter Din'd at the King's Head?

Cook, and his two Drawers, depose they did not see Goodman at the King's Head, when the other Conspirators were there.

Crawford. About a Twelve-month ago, my Lord Aylesbury, Sir John Friend, Sir John Fenwick, Sir William Parkins, Capt. Porter, and two or three more; I think about Eight in all, came and Din'd there.

Sir B. Shower. Was the Room shut while they were there?

Crawford. The Drawers went up and down commonly.

Sir B. Shower. Did any body come to them while they were there?

Crawford. No, Not during my Lord Aylesbury's stay; and my Lord Montgomery went away with him, about Four a Clock.

Serj. Darnal. You say Mr. Goodman did not come up, 'till after they were gone?

Crawford. I did not see him at all.

Mr. Comper. Could any Man come in and out, without your seeing?

Page 198.

Crawford. I was up and down; and if any one had come in, I should have seen him when I came up again.

L. C. J. Treby. You say, my Lord *Aylesbury*, and others, went away about Four a Clock; Pray, How long did the rest of the Company stay?

Crawford. I can't remember, they staid there pretty late; it was dark.

L. C. J. Treby. Did you attend the Company after my Lord *Aylesbury* was gone?

Crawford. I went up and down into that Company, as I did into others: I was there once or twice after my Lord *Aylesbury* was gone, I am sure, and I never saw Mr. *Goodman*.

Mr. *Huntley* appear'd.

Sir B. Shower. Pray acquaint the Court, what Company were with Mr. *Porter* at the *King's Head*?

Huntley. My Lord *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Parkins*, Sir *John Friend*, Mr. *Porter*, and Mr. *Charnock*, Din'd there; and my Lord *Aylesbury*, and my Lord *Montgomery*, went away about Four a Clock: I went down Stairs after them.

Serj. Darnal. Was Mr. *Goodman* there before they went away?

Huntley. No, He was not; I attended them at Dinner, and was call'd, and went in and out of the Room frequently, after Dinner; and the rest of the Company went away late.

Att. Gen. Was Mr. *Goodman* there at all that Day?

Huntley. I did not see him at all; and I attended only upon that Company.

Att. Gen. Did any body else come to that Company after Dinner?

Huntley. No, Sir: And as to Mr. *Goodman*, I never saw him in my Life, 'till now.

Sir B. Shower. Did the Servants go up and down as they us'd to do?

Huntley. Yes, Sir.

Att. Gen. Sir *Bartholomew* would have it, that there was no Consultation at all; and yet Sir *John Friend*, that's Dead, has own'd it. And Mr. Ser-
jeant

jeant *Darnal* did open, that the Confession of those that died, was an undeniable Proof of the Conspiracy.

Mr. *William Cock* appear'd.

Serj. *Darnal*. Can you tell who Din'd at your House when Capt, *Porter* was there?

Cock. There was my Lord *Aylesbury*, my Lord *Montgomery*, Sir *William Parkins*, Sir *John Fenwick*, Sir *John Friend*, Capt. *Charnock*, Capt. *Porter*, and Mr. *Cook*. The Door was shut as it us'd to be, but no body was forbid coming in: And my Lords *Aylesbury* and *Montgomery* went away about Four a Clock.

Att. Gen. Do you remember when Mr. *Goodman* came there?

Cock. I never saw *Goodman* in my Life, before to Day: Nor did I see any body else come to that Company. They went away about Eight or Nine a Clock.

Mr. *B. Powis*. Did Mr. *Cook* stay till the last?

Cock. That I can't tell, truly.

Att. Gen. Can you take it upon your Oath, that *Goodman* was not there while my Lord *Aylesbury* staid?

Cock. I do, and can take it upon my Oath he was not.

Att. Gen. Why are you not as positive that he was not there at all, as that he was not there before my Lord *Aylesbury* went away?

Cock. He might come in afterwards, and I not see him.

Sir *Bar. Shower*. Did you see him, upon your Oath, or did you not?

Cock. No, I did not: 'Tis possible he might come in without my seeing him, but I don't think he did.

Sol. Gen. How can you be positive Mr. *Goodman* was not there, before my Lord *Aylesbury* went?

Cock. I believe I was in the Room half a dozen times after Dinner; and there were no more than what Din'd there, when my Lord *Aylesbury* went away.

Att. Gen. Did you know the Persons that Din'd at your House? Did they use to meet there?

Cock.

Cock. Commonly Sir *John Friend* came once a Week; Mr. *Charnock* I knew when I was Drawer, and so I did Sir *William Parkins*: The rest I knew by hearing their Names only.

Mr. Comper. Where did you see the Lords when they went away?

Cock. I saw the Coach that was call'd for my Lord; so I went up Stairs, and met my Lord at the top of the Stairs, coming down?

Sol. Gen. How can you be positive who was in the Room, when he came out then?

Cock. I went up into the Room, just after my Lord *Aylesbury* went away; and I had been there but just before.

Thomas Peachy was call'd.

Page 201.
Peachy, and others, depose the Prisoner never absconded after the Plot.

He depos'd, That the Prisoner never absconded after the Plot broke out; but went abroad, and admitted Company, as before. And that he was taken by a Messenger, at his Father's House, on a Sunday Morning, in his own Room.

Mr. Treganna was Sworn.

He depos'd, That the Prisoner was at his Chamber, a Week after Mr. *Charnock's* Tryal.

Mr. Nichols was Sworn.

That he was a Man of Piety and Virtue.

He depos'd, That the Prisoner was with him, at his Office and his Chamber, and at his Father's House, several times after the Plot. And as to his Character, he said, He was a Man of great Piety and Temperance.

Mr. Hammond was Sworn,

And wish'd Success to the present Government.

He depos'd, That the Prisoner was a Man of Conscience: That he had heard him declare his Detestation of a *French* Force; and wish Success to our Fleet, against the *French*. That when the Plot broke out, he spoke with Abhorrence of it, And three or four Days before he was taken into Custody, said, He knew no more of it, than what was in the Prints. And that he never heard him speak disrespectfully of the King or Government.

Page 202.
De la Rue deposes that *Edwards*, the Prisoner's Witness, was concern'd in the Assassination,

Then the King's Council call'd Mr. *De la Rue*, and Mr. *Porter*, again; who depos'd, That *Edwards*, the Prisoner's Witness, was concern'd in the Assassination; and that his Name was in Mr. *Char-*

Charnock's List; and that he frequently went by the Name of *Douglas*.

Mr. Goodman, and *Mr. Porter*, were also call'd again, to confront *Cock*, who kept the *King's Head* Tavern.

Goodman depos'd, That he had been five or six times at the *King's Head*: That once, particularly, he was Sick there, and *Cock* gave him some Brandy. But *Cock* persisted in it, that he never saw him in his Life, 'till now.

Mr. Porter depos'd further, That *Goodman* was in the Room, at the *King's Head*, with my Lord *Aylesbury*, and the rest; near two Hours, before my Lord went away.

Page 203.

Then Sir *Bar. Shower* summ'd up the Evidence, and made his Observations upon it, in behalf of the Prisoner. And told the Jury, they were not to Find according to their private Opinions, or according to common Fame, or the Verdicts that had been given in other Cases; or according to the Confessions or dying Speeches of Criminals, who had been Executed; *whether made by themselves, or by others for them*; but they must have the Evidence of two Credible Witnesses. That the Question was not meerly, Whether *Mr. Cook* were Guilty? but, Whether he was legally prov'd Guilty? As the Stat. of *Ed. the 6.* and the new Statute for Tryals of Treason, requir'd. That they might observe, that Capt. *Porter* had fix'd this Meeting in *May*, which was the only Month the Prisoner could have been affected by his Evidence. For if he had said it was in *April*, the Prisoner would have had the Benefit of the Act of Indemnity: And he could not lay it in *June*, because then *Porter* was confin'd in *Newgate* for a Riot. That it was very improbable, *English* Protestants, of pious Conversation, and good Morals, should join in such a Message to the late King; to invite over a *French* Popish Force. And if it were improbable, they would never give Credit to it; unless the Conviction or Proof were irresistible. That he was not Guilty in the Eye of the Law, if there were not two Witnesses; and here there was but one; at least, but one that was to be believ'd, That

Sir B. Shower's Observations on the Evidence for the Prisoner.

Insists, That if there were not two legal Witnesses, they must acquit the Prisoner.

Page 204.

one

That *Goodman* could not be deem'd a Credible Witness.

one that could lie in wait, to Poison and Murder two Noble Dukes, from whose Families he had receiv'd such Obligations; although he was pardon'd by Act of Parliament, and Satisfaction was acknowledg'd on Record, the next Term; it could not purge him from the Disgrace and Villainy of the Design, or restore him to his Credit, so as to be believ'd; especially, when there was such concurring Testimony, by various Witnesses, that what he had sworn, was absolutely false.

Page 205.

When Sir *Bartholomew* had concluded, my Lord Chief Justice *Treby* told Mr. *Cook*, if he had any thing to offer, he must speak then, before the King's Council summ'd up.

The Prisoner speaks for himself.

Then Mr. *Cook* appeal'd to all that knew him, as to his Character and pious Behaviour; and declar'd, he was ever against Foreign Forces, or an Invasion: And that he never heard of the intended Invasion, 'till the whole Town rang of it. That he must deny that he saw Mr. *Goodman* at the time they mentioned; and said, he design'd to receive the blessed Sacrament shortly, and wish'd he might perish when he did it, if he spoke an Untruth. And that if ever he bought a Pistol, or Blunderbuss, towards such a Design; he wish'd God might sink or strike him dead. That, indeed, he never did take the Oaths, nor did he ever refuse them, because they never were offer'd him; but that he was ready to take them then.

Page 206.

Mr. *Sollicitor's* Reply to the Prisoner's Defence.

Then Mr. *Sollicitor* summ'd up, and made his Observations on the Evidence for the King. He said, As to that Record of Mr. *Goodman's* Conviction, that was produc'd; It appear'd also, that Satisfaction was acknowledg'd upon the same Record, the very next Term. Which induc'd him to believe, That the Evidence which was given, was not much credited: But however, that this did not incapacitate a Man to be a Witness. That though it were a black Crime, it did not totally destroy a Man's Credit; for then, both Mr. *Goodman*, and Mr. *Porter*, who had confess'd themselves guilty of High Treason, which was a greater Crime, were not to be credited; and yet Sir *John Friend* had been condemn'd upon *Porter's* Evidence: And such Evidence was always admitted in

Says, *Goodman* is a legal Witness, and that if High Treason did not disable him, no other Crime could.

In these Cases. That the Three Witnesses, who depos'd they did not see Mr. *Goodman* at the Tavern, could not out ballance the Testimony of two positive Witnesses, who swore he was there; because it is acknowledg'd by those Three, that Mr. *Goodman* might be there, and they not see him.

That as to Mr. *Cook's* Character, His being a good *English* Protestant, &c. Sir *John Friend*, and Sir *William Parkins*, who stood in the same Place, had insisted on the same Character, as an improbability of their being concern'd in such a Design: But that was no manner of Evidence, and would be of little Weight against positive Oaths. That as to the Prisoner's saying, He abhorr'd an Invasion, and the like; it was easily said, and had been said by others in the same Place: But they were only Sayings, and nothing else. For if there could be no other Construction put upon the Evidence, but that Mr. *Charnock* was sent upon the abovesaid Message, and the Witnesses were legal Witnesses, there was no room for the Gentlemen of the Jury to doubt, but that the Prisoner was as Guilty of the Crime laid to his Charge, as any others that had been Try'd and Condemn'd for the same.

Then my Lord Chief Justice *Treby* proceeded to direct the Jury.

He told them, " That Meeting and Consulting
" to Depose the King; or the agreeing to procure
" an Invasion; or an Insurrection at home, were,
" any of them, Overt-Acts of Compassing the
" King's Death.

" That there was two positive Witnesses, as the
" Law requir'd; and notwithstanding the Obje-
" ctions that had been made to *Goodman's* Credit,
" they were both Legal Witnesses. And that they
" were the rather to be believ'd, because their Te-
" stimony agreed in every Circumstance, though
" they were examin'd apart. That, indeed, if the
" Jury, in their Consciences thought, both, or
" either of the Witnesses Forsworn, they ought
" to Acquit the Prisoner; otherwise, they must
" find him Guilty.

The Jury withdrew, and in three quarters of an Hour return'd, and brought the Prisoner in *Guilty*.
Then

Page 207.
That the im-
probability of
his being con-
cern'd, which
they inferr'd
from his Cha-
racter, could
not outweigh
positive
Oaths.

Chief Justice
directs the
Jury, that
Meeting and
Consulting to
levy War, is
an Overt-Act
of Compas-
sing, &c.
Page 208.

Page 209.
Page 210.

Page 211.
The Prisoner
Convicted.

Then the Court adjourned 'till the Afternoon ; when the Prisoner was brought to the Bar : And it being demanded of him, what he could say in Arrest of Judgment ; he offer'd a Paper to the Court, recommending himself to the King's Mercy ; which they assur'd him should be laid before His Majesty.

And Mr. *Recorder* pronounc'd Sentence upon him as a Traytor.

And receives
Sentence.

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Page 217.

The Tryals of JOSEPH DAWSON, EDWARD FORSEETH, WILLIAM MAY, WILLIAM BISHOP, JAMES LEWIS, and JOHN SPARKS, for Piracy and Robbery; at the Sessions of Oyer and Terminer, held at the Old-Bailey, London, the 19th of October, 8 W. 3. Anno Domini 1696: Before the Right Honourable EDWARD RUSSEL, Esq; and the rest of the Lords of the Admiralty; Sir CHARLES HEDGES, the Lord Chief Justice HOLT, and others His Majesty's Commissioners: Together with HENRY EVERY, their Captain (not yet taken.)

The Indictment for piratically taking the *Gunsway*.

Dawson pleads Guilty.

Page 218.
The rest acquitted.

“ THE Prisoners were indicted for feloniously and piratically taking and carrying away, from Persons unknown, a certain Ship, call'd the *Gunsway*, with her Tackle, Apparrel, and Furniture, to the Value of 1000 l. and of Goods to the Value of 110 l. together with 100000 Pieces of Eight, and 100000 Chequins, upon the High Seas, Ten Leagues from the Cape St. John, near Surat, in the *East-Indies*.

To which Indictment, Dawson pleaded *Guilty*; and the other Five pleaded *Not Guilty*.

The Evidence against the Prisoners was full and clear, (which, being the same as in the following Tryals, is omitted here;) however, they were all

all acquitted: Whereupon the Court adjourned to *Saturday* the 31st of *October*; and the Prisoners were committed upon a new Warrant, for several other Piracies.

Die Sabbati, 31 Octob. 8 W. III. 1696.

The Court being sat, and Proclamation made as usual, Sir *Charles Hedges*, the Judge of the Court of Admiralty, gave the Charge to the Grand Jury; wherein he tells them, "That if
 " any Person whatever, Native or Foreigner,
 " Christian or Infidel, with whose Country we
 " have no War, should be robb'd or spoiled in the
 " *Narrow Seas*, the *Mediterranean*, *Atlantick*,
 " *Southern*, or any other Seas, it was Piracy; and
 " within the Limits of their Enquiry, and the
 " Cognizance of that Court: That they were not
 " oblig'd, in all Cases, to require a clear and full
 " Evidence, but only to examine 'till they found,
 " and were satisfied in their Consciences, that
 " there was a sufficient and just Cause, to put the
 " Party accus'd upon his Tryal: And therefore,
 " if they had Proofs enough to create a Presumpti-
 " on against the Party accus'd, when the Case
 " was odious and of great Importance; there safest
 " Way was, to put it into a proper Method for
 " the Petit Jury, who were to receive full Satis-
 " faction from the Evidence that should be given
 " in the Presence of the Party; and since many,
 " who were design'd for that Service, attended
 " there, he took leave to put them in mind, that
 " they had no Power to do more or less than was
 " agreeable to the Evidence: That they were
 " not to interpose in Points of Law, or to be
 " sway'd by any Consideration whatever; but
 " what should arise from the Proofs judicially
 " made: They were indeed Judges of the Fact,
 " but not arbitrary: They were as much restrai-
 " ned by the Dictates of Conscience, inforc'd
 " and convinc'd by reasonables Proofs, as the
 " Judges on the Bench, were by the Rules of
 " Law: And that when notorious Malefactors
 " came off, against whom there was full Evidence;
 " it

Charge to the
Grand Jury
by Sir Charles
Hedges.

Page 219.
Probable E-
vidence suffi-
cient for
them to find
a Bill upon.

The Petit Ju-
ry must go
according to
their Evi-
dence produ-
ced.

“ it were to be wish'd, especially in such Cases as
 “ relate to the Laws of Nations, that the Reason
 “ which induc'd such a Verdict, should be given
 “ for the publick Satisfaction; since Foreigners
 “ look'd upon the Decrees of our Courts of Ju-
 “ stice, as the Sense and Judgment of the whole
 “ Nation: That if a Jury happen'd to be too severe,
 “ there was Room for Mercy; which upon a
 “ just Representation, the Innocent never fail'd
 “ of obtaining: But for a Fault on the other
 “ hand, there was no Remedy for injured Foreign-
 “ ers, but their carving out for themselves, (as
 “ they might be sure they would,) such a Satis-
 “ faction upon our Merchants as they should
 “ think fit; whenever they should have an Op-
 “ portunity.

Then the Grand Jury withdrew, and soon af-
 ter return'd; having found a Second Indictment
 against the said *Joseph Dawson, Edward Forseeth,*
William May, William Bishop, William Lewis, and
John Sparks; who were thereupon set to the Bar,
 and Arraign'd again.

Page 220.
 A Second In-
 dictment
 found against
 the Prisoners.

The Indict-
 ment for pi-
 ratically run-
 ning away
 with the
Charles, Capt.
Gibson Com-
 mander.

The Indictment sets forth, “ That the Priso-
 “ ners, on the 30th of *May*, in the 6th Year of
 “ King *William* and Queen *Mary*, by Force of
 “ Arms, upon the High Seas, about Three Leagues
 “ from the *Groyn*, and within the Jurisdiction of
 “ the Admiralty of *England*; piratically and fe-
 “ loniously did set upon one *Charles Gibson*, a
 “ Subject of this Crown; being then Commander
 “ of a certain Merchant Ship of Forty Guns, cal-
 “ led *Charles the Second*, and belonging to cer-
 “ tain Subjects of this Crown: And did then, and
 “ there put the said *Charles Gibson* in fear of his
 “ Life; and feloniously and piratically steal and
 “ take away, from the said *Charles Gibson*, the
 “ said Ship, call'd *Charles the Second*; with her
 “ Tackle, Apparel, and Furniture; Guns, Arms,
 “ Provisions and Merchandize, of such a Value,
 “ being then in the Possession of the said *Charles*
 “ *Gibson*; and belonging to the Subjects of this
 “ Crown; against the Peace of our said Lord the
 “ King, and the late Queen, their Crown and
 “ Dignities, &c.

To

To which Indictment the said *Joseph Dawson* Dawson pleads
pleaded *Guilty*; and the other Five pleaded *Not Guilty*.
Guilty. Page 221.]

Then the Jury were call'd.

L. C. J. Have you any of the former Jury in this Pannel.

Clerk of Arraignment. Yes my Lord.

Mr. Conyers. We shall except against them for the King.

L. C. J. If you have return'd any of the former Jury, you have not done well; for that Verdict was a Dishonour to the Justice of the Nation.

After several of the Pannel had been challeng'd, both for the King and the Prisoners, a Jury was Sworn: And the Grand Jury return'd with Two other Indictments they had found against the Prisoners; the one for piratically taking a Moorish Ship, and the other, for committing Piracy on Two Danish Ships. Two other Indictments for Piracy, found against the Prisoners.

After Proclamation made, for Evidence, as usual, Mr. *Whittacre* opened the Indictment: And Doctor *Littleton*, Advocate-General, shew'd the heinousness of the Offence the Prisoners stood indicted of.

Then *John Gravett* was call'd, and Sworn.

Sol. Gen. Give an Account of what you know of the Prisoners running away with the Ship *Charles the Second*.

Gravett. I was Second Mate of the Ship: There came a Boat from the *James Galley* with People in her, and as soon as the Boat came, the Carpenter seiz'd me by the Throat, and clapp'd a Pistol to my Breast and said, If I resisted I was a dead Man: And they led me to my Cabbin; and One stood with a Pistol at my Cabbin-Door; 'till they were got Two Leagues without the *Groyn*: Then *Avery* came to speak with Capt. *Gibson*, who lay sick, and was guarded on both Sides; and when he had done speaking to him, he said to me, He suppos'd I did not intend to go with them: And I, and the rest that would not go with them, had Liberty to go ashore; and *Avery* was so kind to let me have some of my Cloaths: And *William*

Page 222.
Gravett's Evidence of the Prisoner's assisting *Avery* to run away with the *Charles*.

May took me by the Hand, and wish'd me well home; and bid me remember him to his Wife.

Sol. Gen. Do you know any of the Prisoners?

Gravett. I know *Joseph Dawson*, *William May*, and *John Sparks*; they belong'd to the *Charles the Second*.

Mr. Conyers. Did any of the Prisoners come in the Boat from the *James*?

Gravett. I cannot tell; but there was about Twenty Six came from the *James*.

Then *Thomas Druit* was Sworn.

Sol. Gen. Do you know any thing of the carrying away the *Charles the Second*?

Druit. I was Mate of the *James*; and about Nine a Clock, one came from on board the *Charles*, and said the Ship was going to be run away withal, and I order'd the Pinnace to be manned to recover the Ship; and when I came, there were about Twenty Five Men got into the Boat, the last that went in was one *Pike*, and I bid them put back, but they would not; and went away Damning and Sinking: And we sent several Guns after them to bring them back, but they would not come.

Mr. Conyers. Were any of the Prisoners at the Bar there?

Druit. There were *Edward Forseeth*, and *James Lewis*, and *William Bishop* among them.

David Creagh was Sworn.

Sol. Gen. What do you know of the Prisoners running away with the Ship *Charles*?

Creagh. Upon the 7th of *May*, 1694, I came to the *Groyn*, on board the *Charles*; and being in my Cabbin, I heard a great Noise upon Deck; and Capt. *Humphreys*, who commanded the *James Galley*, call'd to us, to tell us his Men were run away with the Boat, and gone to Captain *Gibson*; to which *Avery* answer'd, he knew that well enough: So the Men came on board. And as I was coming out of my Cabbin to see what the matter was, I was met by *Avery*, the Carpenter, and Two *Dutch* Men, who obliged me to retire to my Cabbin again. And Capt. *Humphreys* fir'd Two Guns at us, but we soon got out of Reach; and

Druit's Evidence of their running away with the James's Boat.

Page 223.
Creagh's Evidence of the Prisoners assisting Avery to run away with the Charles.

and I went up on the Quarter-Deck, and *Avery* took me by the Hand, and ask'd me if I would go with him; I said I did not know his Design: And he answer'd, We should all know to morrow Morning: I told him that then it would be too late to repent of the Design. Upon this the Carpenter came to me and said, if I would not go down, he would knock me on the Head; and as I was going down *William May* met me, and held a Pistol to my Head and said, damn him, he deserves to be shot through the Head; but there presently came Orders from *Avery*, that those who would go ashore should prepare to be gone: And when Capt. *Gibson* was got out of Bed, (he being very ill of a Fever) *Avery* said to him, I am a Man of Fortune, and must seek my Fortune; but if the Captain would go with them, he should still command the Ship: Capt. *Gibson* said, he was sorry it happened at that Time, and that he never thought they would have serv'd him so, who had been so kind to them all: And to go on a Design against his Owners Orders he would not do it. Then *Avery* bid him prepare to go ashore, and the Captain and several others went into the Boat; and the Deponent heard them order the Doctor to be secured, but if any more would go into the Boat they might: And we came into the Pinnace to the Number of Sixteen, and they gave us Four Oars and set us a drift; and we went aboard the *James*.

Conyers. Was there Room for more in the Boat?

Creagh. Yes there was.

Mr. Comper. Was there any Opposition when this was done?

Creagh. No, there could be no Opposition, for there came Men from the whole Squadron and surpriz'd us; and they were assisted by those who belong'd to the Ship *Charles*.

Sol. Gen. What do you know of the Prisoners at the Bar?

Creagh. I know only *May*.

Want of Wages put them upon running away.

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An Account of the several Piracies committed by the Prisoners.

Then *John Dan* was Sworn.

Mr. Conyers. Pray give an Account what you know of taking the Ship *Charles*.

Dan. We had been at the *Groyn* Three or Four Months, and had been about Eight Months out of *England*; and we lay their for our Wages: There was no Wages to be got, so *Avery* and several others contriv'd to run away with the Ship; and on *Sunday* Night they went ashoar, and when they came aboard again they made some Men privy to it: And our Cables were cut and ready to go. And coming under the Castle, we cut all the Boats away but Two; and stood Two or Three Leagues to Sea: And then *Avery* bid Capt. *Gibson* prepare to go ashore if he would not go with them: And the Word was given, that they that would go ashoar might; no body was order'd to be stopp'd but the Doctor: And the Captain and about Fifteen of them went off. We came to the Isle of *May* and victualled, and there we found Three *English* Ships, out of which we took some Necessaries, and Nine Men.

Sol. Gen. Were the Prisoners at the Bar with you, when you went away with the Ship?

Dan. Yes, *Edward Forseeth*, *Bishop*, and *Lewis* came from the *James*; and the other Two belong'd to the *Charles*. — After we had been at the Isle of *May*, and took in what we had Occasion for; our Quarter-Master said, He would give them Bills for what we took of them. Then we went to the Coast of *Guinea* and took several Negroes, and from thence to the Island of *Princes*, where lay Two *Danes*, and we fought with them, and took them; and some of the Men went ashoar in the Island, and others went along with us: We brought the Ships to *Vandepo*, and burnt One, and carried the other with us: Then we came to the Cape *Lopez* under the *Equinoctial* Line; and there we sunk the other. After this we went about the Cape, and touch'd at *Madagascar*. The next Vessel we met was about Forty Tun; we took a small matter out of her and put her ashoar, and there we put Mr. *May* ashoar; and seeing Three *English* Ships coming, we left him

him there and went to the *Equinoctial Line*; but for want of Bread and Water came back again, and took some Rice and Pody out of another small Vessel and sunk her, and then went to the Cape again and took in *William May* and met another Vessel, and took Meal and Rice out of her, and sunk her too. Then we went to a Town called *Meat*, in the *Red Sea*, and the People would not trade with us, and we burnt it: We went up the *Red-Sea* as far as we could; and coming to *Cape Adin*, we met Two *English* Pyrates more, who join'd us. They sailed along with us, and we came to an Anchor at *Bob's-Key*, and had lain there but a Night and a Day, and there came Three *English* Ships more from *America*, who likewise join'd us; and we lay there Five or Six Weeks in Expectation of the *Moorish* Fleet that came from *Mocha*; but they pass'd by us on *Sunday* Night, unseen; as we understood by a Vessel we took: We followed them Two or Three Days, and came up with One of them of Two or Three Hundred Tuns, and took her and plunder'd her; and had some Gold and Silver out of her: We put some Men on board her to keep her with us; and Two Days after, as we were lying at Anchor at *St. John's*, we saw a great Ship call'd the *Gunsway*, and we weigh'd Anchor, and fought her about Two Hours and took her, and plunder'd her; and then sent her to *Surat*, with the People in her. And we stood away for the *Indian Coast*, and about a Week after shared our Money.

Mr. *Comper*. Had all the Prisoners some Share?

Dan. Yes, some had 1000 *l.* some 500 *l.* and some 300 *l.*

Mr. *Whitacre*. What did you do with the *Charles the Second* after the Voyage?

Dan. We left her at *Providence*,

Philip Middleton was Sworn;

Mr. *Conyers*. What do you know of running away with the Ship *Charles the Second*?

Middleton. I was asleep when they run away with her; but in the Morning they call'd up all Hands, and Capt. *Avery* said every Man should share alike, only he would have Two Shares. And we went

They burn a Town in the *Red-Sea*. Five *English* Pirates more join them.

They lie in wait for the *Mocha Fleet*.

And take the *Gunsway*.

Page 225.

And share the Treasure.

Middleton's Account of all their Pyracies

Negroes taken, with their Gold, and made Slaves of.

Page 226.

to *Bonavis* and took in Salt, and from thence to the Isle of *May*; where they plunder'd Three *English* Ships: The Governour of the Island they took aboard 'till they had got what Provision they wanted; and then sent him away again. From the Isle of *May* they steer'd to the Coast of *Guinea*, and put out *English* Colours; whereupon the Natives came on board to trade with them: And they surpriz'd them, and took away their Gold, and chain'd them in the Hold; and when they came to the Island of *Princes*, they gave Seven of them away for Slaves. They sail'd from thence to *Vandipo*, then to *Cape Lopez*, and afterwards to *Annibo*; and then went about the Cape and touch'd at *Madagascar*; and Water'd and got Provisions and Cows to Salt up: From thence we went to *Joanna*, and took some Rice out of a Junk and sunk her: and at *Commeroe* we met a small *French* Vessel and sunk her: And then went to *Joanna* again and took in Mr. *May*. Then they went to *Meat* and burnt it, because the Inhabitants refus'd to trade with us; and from thence to *Bob's-Key*, at the Mouth of the *Red-Sea*: And there we met Five other *English* Pyrates; *May*, *Farrel*, and *Wake* were the Captains of Three of them. And on the *Saturday* Night all the *Mocha* Fleet pass'd by; as we found by a Vessel we took the next Morning: And they went all together after them, and overtook them; and took One of Three or Four Hundred Tun; and they plunder'd her of some Gold and Silver, and put Men on board to keep her: And the next Day they spied the *Gunsway*, and took her, and kill'd several Men on board; and when they had plunder'd the Ship, they left the Men on board to go to *Surat*; Then they went to *Rachipool* in the *East-Indies*, afterwards to *Degorees*, and from thence to *Dassaran*; where they set ashoar Twenty Five *French* Men, Fourteen *Danes*, and some *English*; who were afraid they should be hang'd if they came to *England*. From thence they went to *Assension*, and so to the Island of *Providence* in the *West-Indies*; and they sent a Letter to the Governour, and let him know they would make him a Present of Twenty Pieces

Pieces of Eight, and Two Pieces of Gold if he would let them come in: And Capt. *Avery*, because he had a double Share, offer'd Forty Pieces of Eight, and Four of Gold; and the Messenger return'd with a Letter from the Island, that they should be welcome, and might come and go when they pleas'd.

L. C. J. Had the Prisoners their Shares of the several Prizes?

Middleton. Yes they had.

Just. Turton. What Number of Persons were aboard when the Dividend was made?

Middleton. About One Hundred and Sixty: Some had 1000 *l.* some 600 *l.* some 500 *l.* and some less; according as the Company thought they deserv'd: They gave me above 100 *l.* and told me that would serve to put me out Apprentice; and that I should never go near my Friends.

Mr. Conyers. What became of it?

Middleton. *John Sparks* robb'd me of it.

L. C. J. The King's Council have done. Now is your Time to speak.

Forseeth. My Lord, I desire Mr. *Druit* may be ask'd if I was not one of the *Pinnacle's* Crew. *Forseeth's Defence.*

Druit. Yes you were; and I commanded you back, and you refus'd.

Forseeth. Did not you command me to go?

Druit. Yes, and I afterwards commanded you back, and you refus'd; and I fir'd at you, and shot through the Boat.

Forseeth. I held Water with my Oar, and that was all I could do.

L. C. J. He commanded you to rescue the Ship, and instead of that you run away with her.

Forseeth. I could not bring her back my self, nor come back, unless I should leap over-board: When I came aboard the *Charles*, the Sails were loose, and they cut the Boat off and put her adrift in a Minute's Time; I could not get into her, nor heard nothing 'till Two a Clock the next Day. I hope my Lord, as we are but poor Seafaring Men, and do not understand the Law, you will take it into Consideration.

L. C. J. You knew that he that commits Py-racy deserves to be hang'd.

Forseeth. My Lord, I was sent of an Errand, and compelled to do what I did.

May's Defence

May. Here is One of the King's Evidence testifies I knew nothing of the Ship's going away; and I believe not above Nine or Ten knew of it.

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L. C. J. You were zealous from the begining, and said to one Damn you, you deserve to be shot through the Head.

May. They hurried away the Men into the Boat; and as Mr. *Gravett*, the King's Evidence, says, I desir'd him to remember me to my Wife, for I was not like to see her; none being permitted to go into the Boat but whom they pleas'd: And when those Men were in the Boat, they cry'd to have a Bucket, or else they should sink; for they had Three Leagues to go: And I don't know how they could go so far with more, when the Boat was like to sink with those that were in her, as some of the King's Evidence have testified.

L. C. J. Mr. *Dan*, Did the Men in the Boat call for a Bucket?

Dan. They did call, and a Bucket was given them to pump with.

May. Afterwards, if I had deny'd to go with them, I might have been kill'd.

Sir Char. Hedges. You say you were under a Constraint and Terror, Did you make any Complaint or Discovery, at your first coming into the King's Dominions?

May. I was several Days in the Collector's House at *Bristol*, and did discover the whole to him; and design'd to have discover'd it to the Lords of the Admiralty. I lay sick Four or Five Days at *Bristol*, and then got Passage for *London* in the Coach, and was taken and carried back to the *Bath* again, where the Duke of *Devonshire* examined me, and I gave the same Account that I have done here: And then he directed the Messenger to convey me to *London*.

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L. C. J. Mr. *Gravett*, when you went into the Boat, Did he express any Inclination to go with you?

Gravett.

Gravett. No my Lord, not at all : He was very merry and jocund, and knew whither they were going.

L. C. J. *Will. Bishop*, What have you to say?

Bishop. We were shipp'd on board the *James*, in Sir *James Hubland's* Service, to the Spanish *West-Indies*; and at the *Groyn* there was a great Complaint for Wages, and several of our Men went on board the King's Ships, that they might go for *England*, but could not be entertained; so we all went to our Ship again: On the 17th Day *Capt. Humphreys* call'd out and said, his Men were gone aboard the *Charles*, and bid *Mr. Druit* man the Pinnace, I went into the Pinnace, knowing nothing of the Design, and there presently came in Fourteen or Fifteen and put off the Boat, and would not suffer us to go aboard again, but carried us to the *Charles*, whose Cables were cut, and the Sails loose; and they commanded me down into the Hold: And *Avery* and his Crew would let no body go ashoar but whom they pleas'd.

Bishop's Defence.

L. C. J. *James Lewis*, What have you to say?

Lewis. I went into the Boat by the Command of my Officer, and we were overpower'd by those who were in the Design, and carried aboard the *Charles*, and they commanded me into the Forecastle, and put the Boat adrift; they had Arms, and we had none, so we were forc'd to obey them: And when the Boat went off, they that were in her cry'd out for a Bucket.

Lewis's Defence.

Sparks was in the same Story, and said he was forc'd to go with them.

Sparks's Defence.

L. C. J. Had you no Share of the Plunder.

Sparks. I was forc'd to take it.

L. C. J. *Middleton*; Had not you some Share of it.

Middleton. Yes my Lord, and *Sparks* robb'd me of it all in the Night; I had Two Hundred and Seventy odd Pieces of Gold in a Belt.

Sparks. He took out his Money and shew'd it to the Troopers, and they made him drunk and got it from him; and the next Morning he said they took it from him,

Middleton.

Middleton. I was forc'd to say so, because if I had said he had it, he would have made no more, but to cut my Throat.

L. C. J. Have you any more to say?

Sparks. No, my Lord.

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The Chief
Justice directs
the Jury,

Then my Lord Chief Justice directed the Jury, and told them, " That if there be a Piracy committed, though contriv'd but by one Man, yet if others do concur in it, they are equally Guilty. That though the Prisoners objected, there was a Force put upon them; it was a meer Suggestion, without any manner of Evidence. But there was Evidence of their Consenting and Confederating in this Enterprize.

Then the Jury withdrew, but soon after return'd into Court; and desir'd, if there were any Evidence to prove *John Sparks* consented to the running away with the Ship, they might hear it again.

L. C. J. He was with them at the carrying off the Ship, and at the taking of the several Prizes, and had his Share. Can Men otherwise demonstrate their Consent, than by their Actions?

Juryman. But we understand, my Lord, he is Tried upon his consenting to carry away the Ship.

Those on
board a Pi-
rate, presum'd
to concur
with him, un-
less they
prove the con-
trary.
They are
Convicted.

L. C. J. When a Ship is run away with, and People are aboard that Ship, that is a Proof of their Consent, unless they can produce Evidence of the contrary. Besides, Has it not been prov'd, that as many as were not willing to go upon the Design, were at liberty to leave the Ship? No Man was hindred but the Doctor.

Then the Jury having consider'd further of the Evidence, in a short time, brought them all Five in Guilty.

The Jury
Commended.

L. C. J. Gentlemen, You have done extreamly well; and you have done very much to regain the Honour of the Nation, and the City.

Page 231.
The same Pri-
soners Tried
and Convict-
ed, on two
other Indict-
ments.

The Court adjourned to *Friday* the 6th of *November*; When they were all Tried upon the two other Indictments, viz, *For the Seizing, Robbing, and Carrying away, the two Danish Ships, on the 30th of August, 1694. And, For committing Piracy on a Moorish Ship, the 28th of September, 1695,*

near

near Surat. But the Evidence and the Defence, being the very same as to the Five that pleaded Not Guilty; it is needless to repeat it, or take any further Notice of those Tryals, than that they were all Five found Guilty of the Facts laid in those Indictments: And that *Joseph Dawson* pleaded Guilty, as he had done to the two former.

Page 232.

On the 10th of *November*, 1696, They were brought into Court again, to receive Sentence; and having nothing to say in Arrest of Judgment, they were Condem'd to be Hang'd: And were Executed accordingly, the 25th of *November*, 1696, at *Execution-Deck*.

They receive Sentence, and are Executed.

Proceedings in the Case of Sir JOHN FENWICK, on a Bill of Attainder, brought into the House of Commons against him, 6th Nov. 8 W. III. 1696.

SIR *John Fenwick* had been Indicted and Arraign'd for High Treason, in conspiring the Death of King *William*, and promoting a *French* Invasion; being the same Plot, of which Sir *John Friend* had been Convicted. But Mr. *Goodman*, one of the Witnesses, being withdrawn, the King's Council waiv'd their Proceedings at Law; and the Matter was laid before the House of Commons, at the Instance of some Persons of Honour, who were charg'd by Sir *John Fenwick*, with Designs against the Government.

Introduction shewing how the Bill of Attainder came to be brought in.

Friday 6 November, 1696. Admiral *Russel* acquainted the House, That Sir *John Fenwick*, in his Examinations, had named him (the said Admiral) and several other Persons of Quality, as concern'd in Designs against the Government: And that his Majesty had given leave, to lay those Informations of Sir *John Fenwick's*, before the House. And the Admiral desir'd, that they might be brought up to the Table, and read; that he might have an Opportunity of justifying himself to the House.

Page 233. The House put Sir *John* upon making a Discovery to them.

The House, thereupon, order'd those Papers to be read; and then order'd Sir *John Fenwick* to be brought

brought immediately before them. Sir *John* being brought to the Bar, Mr. *Speaker* acquainted him, the House had been inform'd, he had shewn some inclinations to make a discovery of the Plot; and that the House requir'd, he should make an ample Discovery of it to them.

He insists,
they should
secure him,
his Confession
should not be
made use of
against him.
Which they
decline.

Sir *John* answer'd, He had communicated some Things to the Privy Council; and if the House would give him Security, that what he should say, should be no prejudice to him, he was willing to tell the full of what he knew. And then he withdrew.

Being call'd again, Mr. *Speaker* told him, the House expected a free and candid Confession from him; which was the best Way to obtain their Favour.

Sir *John* said, That having acquainted His Majesty with what he knew, he did not know, if he should not offend him, if he made a Discovery here, without his Consent: And besides, he might be brought to his Tryal in a few Days, and what he might say here, might then be produc'd against him; and therefore entreated the House, to consider the Circumstances he was in.

They hold,
they may ex-
amine a Pri-
soner of State,
without his
Majesty's
leave.

He was again order'd to withdraw. And the House agreed, he should not be acquainted they had the Papers relating to the Information he had given; because they look'd upon them as a Contrivance of his Friends, and thought they should sift the Truth out of him better, if he told his own Story. Nor would they take Notice to him, they had His Majesty's Consent; because, they thought, that derogated from the Privileges of the House.

He desires
time to recol-
lect himself,
which they re-
fuse him.

Sir *John* was called in again, and Mr. *Speaker* told him, He had no Reason to think the King would be angry with him for making a Discovery to the House; that being the proper Place, to enquire of what related to the King and Government. And as to his Safety, they took Notice he said, he had already made a Discovery to the King and Council, and therefore that was only an Excuse. Then he desired Time to recollect himself, but the House did not think fit to give him any. Sir *John* said,

said, in all the Informations he had given to the King and Council, they had still told him, they were Unsatisfactory; and he could expect no Pardon, 'till he gave a fuller Account. That he knew this House to be a good Security, if he had it; but he might be told also by them, that what he said, was not Satisfactory. The *Speaker* told him, He must either give them Satisfaction, or withdraw. Then he withdrew; and a Motion was made to bring in a Bill, to Attaint Sir *John Fenwick* of High Treason. Whereupon the House divided, *Yeas* 179, *Noes* 61. — On *Monday* the 9th of *November*, the Bill was brought into the House, and read. And it was order'd, that Sir *John Fenwick* should have a Copy of it, and of the Order for reading the Bill a second time; and that he should be allow'd Pen, Ink, and Paper; and that Mr. *Attorney* and *Sollicitor* should prepare the Evidence against him. Mr. *Speaker* acquainted the House, he had a Letter from Mr. *Fuller*, but they would not permit it to be read. In this Letter, *Fuller* offer'd to make some great Discovery of Sir *John Fenwick's* Practices; but his Credit run very low with the House of Commons at that time, and his Evidence was rejected. Mr. *Speaker* received a Letter from Sir *John Fenwick*, on *Tuesday* the 10th of *November*, desiring Sir *Francis Pemberton*, Sir *Thomas Powis*, and Sir *Bartholomew Shower*, might be of Council for him, and Mr. *Dighton* his *Sollicitor*; and that they might have liberty to come to him.

And vote a Bill of Attainder.

Fuller, the Impostor, offers to give Evidence against Sir *John Fenwick*.

Whereupon it was order'd, he should have two Council, and they should be in private with him; and, at length, they agreed that *Dighton* should be his *Sollicitor*, though they took him to be a *Jacobite*.

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Council, and a *Sollicitor*, assign'd Sir *John*.

Jovis 12 *Nov.* A Petition was presented to the House, from Sir *John Fenwick*, praying he might be heard by his Council, against the Bill; which was granted.

Ven. 13 *Nov.* Sir *John* was order'd to be brought to the Bar; but the oldest Members not having seen any Proceedings of this Nature, it was mov'd, Whether the Mace ought to lie upon the Table, or the Serjeant should stand by the Prisoner with

Agreed, that the Serjeant with the Mace, should stand by the Prisoner at the Bar, it,

Page 236.
Mr. Serjeant
Gould, and
Mr. Serjeant
Lovel, Coun-
cil for the Bill,
Sir Tho. Powis,
and Sir Bar-
tholomew Shower, for
Sir John.

The Bill read
to Sir John.

it, at the Bar? At length it was resolv'd, that the Mace should stand by Sir *John Fenwick*, at the Bar. And the Serjeant, accordingly, took the Mace, and brought Sir *John Fenwick* to the Bar. Mr. Serj. *Gould*, and Mr. Recorder *Lovel*, being Council for the Bill; and Sir *Thomas Powis*, and Sir *Bartholomew Shower*, for Sir *John Fenwick*.

Mr. *Speaker* acquainted the Prisoner, That he being charged with such Designs as would have been destructive to the very Being of the Kingdom, if they had succeeded; the House had order'd a Bill to be brought in, to Attaint him of High Treason; which had been once read, and should be now read to him at the Bar: And when they had heard the Evidence against him, he should have liberty to make his Defence. But they should not permit his Council to question the Power of Parliaments, to pass Bills of Attainder, when they saw fit. And then the Bill was order'd to be read, being to this effect: "That whereas an In-

"dictment for High Treason, had been found
"against Sir *John Fenwick*, upon the Oaths of
"George Porter and Cardell Goodman, for Compas-
"sing the Death of His Majesty, and Adhering to
"his Enemies, &c. And whereas the said Sir *John*
"Fenwick, had procur'd his Tryal to be put off
"from Time to Time, upon pretence of discove-
"ring some Designs against the Government. But
"instead thereof, had form'd false and scandalous
"Accusations, reflecting on several Noble Peers,
"and Members of the House of Commons, con-
"triving thereby, to undermine the Government,
"and create Jealousies between His Majesty and
"his Subjects. And whereas Cardell Goodman, one
"of the Witnesses against Sir *John Fenwick*, since
"the Time appointed for the Tryal of the said Sir
"John, was withdrawn, so that his Evidence could
"not be made use of against him; it was Enacted,
"That the said Sir *John Fenwick* should be there-
"by Convicted and Attainted of High Treason.

Then Mr. *Speaker* directed Mr. Serjeant *Gould*, and Mr. *Lovel*, to open the Evidence, to prove the Suggestions of the Bill.

Serj.

Serj. Gould. The Charge against Sir John Fenwick, is for High Treason; in conspiring to depose the King, subvert the Government, and subject it to the Power of the French. And that in order thereto, He, with several others, consulted and agreed to send One to the late King James, to invite over a French Power. And that Sir John, also, conspir'd to Levy War against the Government; and for that purpose, provided Pistols, and other Arms, &c. And having open'd the Indictment at large, and the Allegations in the Bill, concerning Sir John Fenwick's pretending to make a further Discovery; and the Tryal being put off, by that means, till Goodman was withdrawn: And shewn how he had practis'd with Porter, the other Witness, to abscond; and mentioned some other Methods that had been attempted, to prevent Sir John's being Convicted. He said, they should proceed to prove the Charge, and the Facts he had open'd; and then leave Sir John Fenwick to his Defence.

Mr. Serjeant Gould opens the Charge in the Indictment, and the Methods us'd by Sir John, to protract his Tryal.

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Mr. Recorder. The Crime with which Sir John Fenwick is Charg'd, is High Treason: For this he was Indicted at the Old Bailey, in May, 1696. on the Oaths of Mr. Porter and Goodman. And before this Indictment was preferr'd, the Examinations of Porter and Goodman were taken in Writing, which were the same they had given against Mr. Cook. And at the Tryal of Cook, these Witnesses were sworn, and did verify those Informations. And we shall prove, that at the Tryal of Cook, Porter and Goodman gave an Evidence, that did equally affect Sir John Fenwick, concerning the Consult for carrying on their traiterous Purposes. And these Facts and Allegations, we shall make good by our Evidence, to the satisfaction of the House. And we desire that Mr. Baker, who is Solicitor for the King, and attends at the Door with the Papers, may be call'd in?

Mr. Recorder shews the Nature of their Evidence.

[Accordingly Mr. Baker was call'd in.]

Mr. Speaker. What do you call Mr. Baker for?

Serj. Gould. To give an Account of the Indictment, for we have a true Copy from the Record.

Sir Tho. Powis. We that are of Council for the Gentleman at the Bar, are a little surpriz'd to find what the Defence.

Sir John's Council desire Time for the Defence.

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what the King's Council are going about: We do not find, that any Notice was given him, that there would be any Proceeding against him, by examining Witnesses; or that it would be expected, he should produce Witnesses; especially, there being no way for him to compel them to come here.

Sir B. Shower. Mr. *Speaker*, We are ready to offer some Considerations against the Bill, upon the Suggestions it contains: But to make a Defence against the Matter of Fact, and to answer the Charge at the Bar, we are not ready. The first time we had Notice *Sir John Fenwick* should attend, or be brought to the Bar, was last Night, at Nine or Ten a Clock. Indeed, the Order said, the King's Council should produce Evidence for the King this Day; but it was not order'd that there should be Evidence produc'd for *Sir John Fenwick*; or, at that time, that he should be personally present.

Serj. Gould. The Order said, That the King's Council should produce the King's Evidence: What Reason was there for that Evidence, unless *Sir John* was to apply himself to answer it.

Sir B. Shower. If they think fit to prove the Suggestions in the Bill, That there was an Indictment, That there were Witnesses sworn, and one is withdrawn; and the Promises of making a Confession, and his prevaricating in the Matter; we do not oppose it, and we are ready to make our Defence as to that. But if they attempt to prove him actually Guilty, by living Witnesses, that we must oppose.

Mr. Speaker. You must withdraw, before you have the Directions of the House.

Then *Sir John*, and the Council on both Sides, withdrew; and after several long Debates, this Question was put.

And are allow'd till Monday following.

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Resolv'd, that

the Council

for the Bill,

may examine

Witnesses, as

That Sir John Fenwick be allow'd further Time, to produce Witnesses in his Defence, against the Charge of High Treason: And that he name his Witnesses. Which pass'd in the Affirmative.

And another Question was put, viz.

That the Council that manage the Evidence against Sir John Fenwick, be allow'd to produce Witnesses, touching

touching the Allegations in the Bill, and the Treasons whereof he stands Indicted.

to the Treasons contain'd in the Indictment, as well as to the Allegations in the Bill.

This also pass'd in the Affirmative: And Sir John Fenwick was call'd in again, and Mr. Speaker acquainted him, That the House were of Opinion, That Witnesses ought to be examin'd, to prove the Allegations of the Bill, and to prove him Guilty of the High Treason whereof he stood Indicted. But because his Council said they were unprepar'd, the House had given him till *Monday* next, to make his Defence: And directed him, that he should give in a List of his Witnesses, and he might have the *Speaker's* Warrant for their appearance.

Sir John Fenwick being withdrawn, it was resolv'd, That the Bill for Attainting Sir John Fenwick, should be Read a second time, on *Monday* next.

Monday, 16 Nov. Mr. Speaker desired the Directions of the House, Whether a certain Member, who was order'd to produce a Letter, in Evidence against Sir John Fenwick, should do it while he was at the Bar, or after he was withdrawn? And it was the Opinion of the House, that not only the Letter, but the Evidence, that Mr. *Vernon*, (who was the Member meant) should give, should be in the presence of Sir John Fenwick.

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Then Sir John Fenwick, and the Council, and Solicitors on both Sides, were called in; and Mr. Speaker acquainted the Council for the Bill, that they might give Evidence, not only of the Allegations in the Bill, but also to prove Sir John Guilty of High Treason.

Mr. Serjeant *Gould* open'd the Indictment, and the Nature of the Evidence they were about to give; as well of the Suggestions in the Bill, as of the Charge of High Treason; as he had done the *Friday* before. And Mr. Serjeant *Lovel* said, The Method they should proceed in, would be, *First*, To prove the Allegations in the Bill, That Sir John Fenwick stood Indicted for these Treasons, at the Sessions at the *Old Bailey*, the 28th of *May*, upon the Oaths of *Porter* and *Goodman*. *Secondly*, That several who had been concern'd with him in this Conspiracy, had been Try'd and Attainted; and

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then they should call Witnesses to prove him Guilty of the Treason.

The Indictment against Sir John read.

Then the Indictment against Sir *John Fenwick*, was deliver'd in, and read. And Captain *Porter* was call'd in, and requir'd to acquaint the House, what he knew of the Treason, wherewith Sir *John Fenwick* was charg'd.

Porter produc'd to prove the Facts laid.

Capt. *Porter* depos'd, That about the middle of *May*, was Twelve Month, there were two Consultations, for contriving the best Means to bring in King *James*. That the first was at the *King's Head* in *Leadenhall street*, where were present, the Lord *Aylesbury*, Lord *Montgomery*, Sir *John Fenwick*, Sir *John Friend*, Sir *William Parkins*, Mr. *Charnock*, Mr. *Cook*, and himself; and that Goodman came in after Dinner. That there it was propos'd, that since King *William* was gone beyond Sea, and had left but few Forces here, Mr. *Charnock*, should go into *France*, and desire the late King *James*, to borrow Ten Thousand Men of the *French King*, Eight Thousand Foot, One Thousand Horse, and One Thousand Dragoons; and that at their Landing, they would meet them with Two Thousand Horse. That Capt. *Charnock* desir'd another Meeting, to know if they continued in their Resolution: And accordingly, they met at Mrs. *Mountjoy's*, at *St. James's*, about ten Days after they met at the *King's Head*, and there they agreed to the same thing. And that Sir *John Fenwick* was at both Meetings, and consented to Mr. *Charnock's* going over to procure Forces.

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¶ Sir *John's* Council, oppose *Porter's* being examin'd, as to my Lady *Fenwick's* practising with him about his Evidence; for that what the Wife says or does, can be no Evidence against her Husband.

Capt. *Porter* further depos'd, That he was examin'd by the Grand Jury, when the Bill was presented against Sir *John Fenwick*; and that he gave the same Evidence he did in the House.

Serj. *Gould*. Now we shall ask him, concerning *Clancy's* tampering with him.

¶ Sir *Tho. Powis*. Give us leave to interpose in this Matter: Where a Law is to be made subsequent to the Fact, to Condemn a Man to Death, I hope you will expect Legal Evidence at least. And I take it, that the Evidence ought to be much stronger, than when a Man is Try'd by a Law in being. Indeed, It was said in the Case of my Lord *Strafford*, that where

where the House proceeds in a Legislative Way, there needed no Evidence at all; but I hope you will be of another Opinion. Now they were going about to shew, that my Lady *Fenwick*, the Wife of the Gentleman at the Bar, has used some means to take off *Goodman's* Evidence; but what a Man's Wife says, can neither be made use of, against him, or for him, in any Court whatever.

Sir *Bar. Shower*. The King's Serjeant being order'd to produce the Evidence against the Prisoner, made me hope, you would give us leave to object to what was not Evidence. The Actions of the Wife, were never produc'd in Evidence against her Husband, unless in the Case of my Lord *Audley*; and that hath been held to be contrary to Law, by the Opinions ever since. And though you have declar'd, they should produce Evidence of the Allegations in the Bill, and the Treasons in the Indictment, I can't find any Order that they should produce Evidence concerning the carrying away of a Witness; and 'tis not alledged in the Bill, that *Goodman* was withdrawn by Sir *John Fenwick's* privacy: And as to *Porter's* being tampered with, there is no such Suggestion in the Bill.

And for that, there was no Suggestion in the Bill, of *Porter's* being tamper'd with by Sir *John*.

Serj. *Gould*. The Use we make of it, is only preparatory, to let us in, to tell you what *Goodman* hath sworn. And we shall afterwards produce an Indictment, where, upon his Oath, and the same Evidence we offer here, another of the Conspirators have been Convicted. And therefore we offer it, Whether we shall not be admitted to prove this tampering?

Serj. *Lovel*. We take this to be part of the same Conspiracy, we charge the Prisoner at the Bar with, to prevent his coming to condign Punishment. And therefore we pray, that let the Proceedings of other Courts be what they will, that you will hear the whole Matter in this Case, Whether the Evidence be Positive or Circumstantial?

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Sir *Tho. Powis*. 'Tis true, Circumstantial Evidence is often made use of; but we say, what my Lady *Fenwick* has said or done, is not so much as Circumstantial Evidence; because it is no Evidence at all, to be offer'd against her Husband.

Serj. *Lovel.* By the Order of the House, We are to speak to the Matters contained in the Bill: And one Matter is, His delaying his Tryal, by the Practices mentioned in the Bill, till *Goodman* was withdrawn. But say they, What my Lady *Fenwick* did, is no Evidence against him. When the Dealings with Captain *Porter* are laid before the House, and it is shewn, that immediately after *Goodman* went away; I hope this is as much Evidence as the Case will bear.

Then Sir John, and the Council, were order'd to withdraw.

It was urg'd by those, who were for admitting the Evidence of my Lady *Fenwick's* tampering with the Witnesses, That if the House were tied up to all the Forms and Niceties observ'd by inferiour Courts, to what End was the Prisoner brought here? For if those Courts could have Convicted him, there was no occasion for this Bill. And that it was one Thing, where a Man was to be Try'd by a Jury, and another, when he was to be Try'd before Judges. A Jury might be so swayed and possessed by such Evidence, that it might not be fit for them to hear it: But in the Court of *Chancery*, such Evidence was admitted every Day. And the Reason was, That it was sooner dispatch'd by hearing it, than not. That upon this Tryal, they were to inform themselves, by the best Methods they could: And, That if it appear'd Sir *John Fenwick* sent his Lady to solicit for him, it ought to have some Weight with them.

It was said on the other Side, That though the House was not tied up to the Forms of inferiour Courts, they were tied to that which was the Ground of them, *viz.* Right Reason, and Good Sense; and to the common Rules of Equity. And the Question was, Whether the House would permit a Person to suffer, by the Acts of another? That the Council for the Bill, had not so much as open'd, that Sir *John* was instrumental in conveying away of *Goodman*: And that if my Lady *Fenwick* were guilty in this Matter, it would only affect Sir *John* by way of Inference.

Then

Then the Question being put, *That Capt. Porter be examin'd to the attempt of taking off his Testimony, as to the late Conspiracy.* It was carried in the Affirmative. Page 254.

Then Sir *John Fenwick*, and the Council, and Capt. *Porter*, were brought in; and Mr. *Speaker* told Sir *John's* Council, That the House had agreed, that all the Evidence relating to this Matter, should be laid before them; and they could judge afterwards if it were material. And then directed Capt. *Porter* to give the House an Account, what Attempts had been made upon him, to take off his Testimony. Page 255.

Carried, that *Porter* should be examin'd, as to Sir *John's* Friends tampering with him.

Capt. *Porter*. I had two Meetings with *Clancy*, and he propos'd to give me Three Hundred Guineas, and bear my Charges to *France*; and send me a Bill of Three Hundred more: And that I should have Three Hundred Pound a Year. And he said, one ——— *Fenwick*, desir'd him to make this Proposal to me.—— I met him seven or eight times about this Matter; and he told me, my Lady *Fenwick*, and my Lady *Montgomery*, should meet me, and confirm every thing. And the Day before I was to go, I met my Lady *Fenwick*; and she said, what *Clancy* had propos'd, should certainly be made good. And I receiv'd Three Hundred Guineas of *Clancy*; and he promis'd me a Bill of Three Hundred more, that was deposited in his Hands, by ——— *Fenwick*, to be sent after me into *France*. And he brought me a Letter, which, he said, was writ by Sir *John Fenwick*, to King *James*, on my behalf: And I read it, and it was deliver'd to one Capt. *Donelagh*, who was to go with me. In the Letter, he desired His Majesty, that since my going away was to lave my Lord *Aylesbury*, *Montgomery*, &c. he would please to pardon what I had done. It was not subscrib'd by Sir *John*; but, they said, King *James* would know who it came from. They said, the Boat was provided, and I was to go the next Day; But they were taken up presently after.

Then the Record of *Clancy's* Conviction was produc'd, and read, After which, *Thomas Roe* was

produc'd as a Witness, to prove what Endeavours had been us'd with him, to discredit *Goodman's* Testimony.

Roe examin'd, as to his being dealt with, to discredit *Goodman's* Testimony.

Mr. Roe depos'd, He had occasion to apply himself to *Mr. Dighton*, in *September* last, about Business: And *Dighton* told the Deponent, it was in his power to do *Sir John Fenwick* Service, for that he was acquainted with *Goodman*. And that if the Deponent could discredit *Goodman's* Testimony, he should have 100 *l.* a Year, settled upon him for Life. And ask'd him particularly, If he never heard *Goodman* talk of his poisoning the Duke of *Norfolk*, and robbing on the High-way, and of his being concern'd with Clippers. That as soon as *Dighton* had made his Proposal, the Deponent told *Goodman* of it; and *Goodman* advis'd him to get something under *Dighton's* Hand. That he afterwards met *Mr. Dighton*, who made great Asseverations, that what he had said, should be perform'd. ——— And that *Goodman* told this Deponent, that *Sir John Fenwick's* Sister had been with him, and made some Proposals to him.

Then the Council for the Bill desir'd, that *Goodman's* Examination, taken by *Mr. Vernon*, and under *Mr. Vernon's* Hand, might be read.

Sir John's Council oppose the reading of *Goodman's* Examination, taken by *Mr. Vernon*, as illegal Evidence.

Sir Thomas Powis said, He hoped they would not admit an Examination to be read against *Sir John Fenwick*, to which he was neither Party nor Privy; and he had no opportunity of cross-examining the Party. That in a Case of Five Shillings, the Deposition or Examination of a Person, could not be made use of as Evidence: And if it were not admitted, where Property was concerned in the lowest Degree; he suppos'd it would not be admitted here.

Sir Bar. Shower added, That the Deposition of a Person beyond Sea, could not be read, unless the Party, against whom it was to be read, had been privy to the Examination: And might have cross-examined him, or examined to his Credit. But in Criminal Cases, it was never admitted. That even in an Appeal of Murder, where there is an Examination of Witnesses taken before the Coroner, for the same Fact; yet those Depositions

can't

can't be read because it is another Suit: That it is only an Information before a private Justice, and if *Goodman* had died it could not have been given in Evidence: Or, if he had been sick or withdrawn, without the Prisoner's Privity, it could not have been read in another Court.

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Serj. *Gould* admitted, That where a Witness could be produc'd in a Court of Law, his Examination should not be read; but here he was proved to be withdrawn: That it was every Days Practice to read Depositions where the Witnesses were dead, and it appeared here a Witness was withdrawn, and there had been tampering with another; from whence it might be presum'd, he was tamper'd with too: And their Reason of coming into Parliament was, to find a Remedy against this Practice.

Admitted, that where a Witness cou'd be produc'd, his Examination ought not to be read.

Mr. Serj. *Lovel* said, That even in Capital Cases, where it appear'd to the Court that a Witness had been withdrawn, who had given Information against a Prisoner by the Prisoner's Practice, his Information had been admitted to be read; which he said was this Case: But however, the House were not tied up by ordinary Rules.

Sir *Tho. Powis* observ'd, Mr. *Recorder* had not quoted One Authority for his Opinion.

Mr. *Recorder* however insisted, That it was Law; but added, They did not offer this Evidence alone as conclusive, but to corroborate Capt. *Porter's* Testimony; who had given his Evidence *Viva Voce*: And the Council on either side, insisting on their several Opinions to be Law, they were order'd to withdraw.

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Mr. *Manly* said, he never heard any of the Long Robe assert before, That an Examination before a Justice of Peace, could be read against a Man for his Life.

To this Mr. *Sloan* answered, That my Lord Chief Justice *Hales*, in his *Pleas of the Crown*, under the Head of Evidence says, such Examinations may be given in Evidence, where the Party is dead or absent.

Sir *Richard Temple* said, Such Depositions were never given in Evidence, even in the worst of

Times; and that at the Tryal of my Lord *Mordant*, when they had laid aside Juries, it would not be admitted: And we are tied by the Rules of Law, or we are tied by nothing.

Sir Tho. Littleton. I shall not reckon my self so tied up to the Rules of Law, but that I may hear all the Evidence that shall be offered: Here are Two Witnesses who were examined by the Jury that found the Bill, if we can't have those Two, let us have as much as we can.

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Mr. Boscowen. I have seen a Justice of Peace examined, as to Depositions he hath taken, and I take it to be ordinarily done.

Mr. Harcourt. If you were to pick all the Absurdities out of the Tryals of the last Reign, you could not pick out more than has been endeavour'd by the King's Council to be put upon you this Day: But if these Depositions are Evidence if the Party be absent, there was no need of applying in this extraordinary Way.

Sir Edw. Seymour. Bills of Attainder, and Judgments of Attainder have been reversed for no other Reason, but because the Parliament have not proceed by the Rules of Law: Now, if you are not bound by the Rules of inferiour Courts, yet you must by the Rules and Practice of Parliaments: And I would fain know, Whether this House ever admitted an Affidavit for Evidence? For then you make this which is a superiour Court lame, without the Assistance of an inferiour Court.

Mr. James Montague. It has been said, that if it be Evidence, the Courts below might have proceeded upon it; but that I take to be no Objection, because, though it might be admitted as Evidence, yet the Law, in this Case, requires Two Witnesses. And in Cases of Felony, where the Law does not require Two Witnesses, I have seen it allow'd several times: A learned Gentleman tells you, my Lord Chief Justice *Hales's* Opinion is so; and that is grounded upon an Act of Parliament: And if that requires Depositions to be taken, and to be Evidence against Criminals, we ought to take Notice of it.

Mr.

Mr. *Harley*. If an Act of Parliament could be produc'd for this, the Debate were at an End: But if there be an Act positive in Fact against it, then I hope you will not receive it; as to what my Lord Chief Justice *Hale* says, that only relates to Cases of Felony. He says that Informations might be taken of the Person himself (though not by the Common Law, but) by particular Acts of Parliament, and Depositions were to be admitted, (but the Party was to be by;) but if you will take Notice of a Statute, you must take Notice of a Statute that is in Point: I think 'tis of the greatest Consequence to admit Affidavits.

Sir *Rob. Richard*. Every Parliament Man can remember, you have made an Act that there shall be Two Witnesses in Cases of Treason; but you then provided that the Proceedings of this House should not be tied up by it: And I am not for refusing any Evidence in this Case, be it never so small.

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Att. Gen. The Council for Sir *John Fenwick* are very much mistaken when they say, That an Examination in Writing was never read in a Court of Justice: A good Authority has been cited for it, and every one knows that such Examinations before a Justice are read, the Practice is so; and this Information of *Goodman* might have been admitted for Proof in the Courts at *Westminster*; but then, unless another Witness had been produced, besides *Porter*, he must have been acquitted.

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Mr. *Attorney's* Opinion that an Examination before a Justice, may be read, where the Witness can't be had.

Sir *Charles Musgrave*. If you are not tied up to the Forms of inferiour Courts in Law or Equity, you are bound by your own Constitutions; and the reading of Affidavits has ever been opposed in this House: Was ever an Affidavit read in case of an Impeachment, and this is much of the same Nature.

Sir *Jos. Williamson*. All the Cases that are brought are from inferiour Courts, and the last from the Usage in less considerable Cases; but a Bill of Attainder is an extraordinary thing, and ought never to be us'd but upon extraordinary Occasions: And the Question here is but as to the Forms of Proceedings, but the Law has intrusted the

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the Parliament with a greater Power than now they are about to execute. They may declare that to be a Crime that was no Crime before it was committed, and surely they may determine what they will admit as Evidence.

Mr. *Chancel. of the Exchequer*. There is lodged in the Legislature a Power to judge those Crimes that are shelter'd from the Law; and I believe there never was an Attainder that went upon a more just Proceeding than this: The Prisoner was not only in a Plot to bring in a Foreign Power, but has given in a false and scandalous Information, to breed a Distrust and Jealousy between the King and his People; and he hath dallied and gain'd so much Time as he hath had an Opportunity to corrupt one of the Witnesses, and therefore it would be hard if no Law should reach him.

Mr. *Brotherton*. It hath not been so much as proved before whom this Information, or Affidavit was made, and yet it is offer'd to be read: And 'tis said this House are not bound by the Rules of other Courts, but for that Reason they ought to give such Rules as other Courts should immitate.

Sir *Godfrey Copley*. I know that the Court of Parliament takes no President from *Westminster-Hall*, nor am I afraid of any President they should give to *Westminster-Hall*; but I am afraid of giving a President to future Parliaments: Suppose the Information that Sir *John Fenwick* has deliver'd in should be produc'd as Evidence against any of those honourable Persons that are charg'd in it, and some Rascals in future Reigns should come in against them, and this Paper should be brought to supply the Room of another Witness, Of what Consequence might this be?

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Then the Question was put, *That the Information of Cardell Goodman, taken upon Oath the 24th of April, 1696, be read.*

Ays 218.

Noes 145.

Resolv'd, that
Goodman's Ex-
amination
should be
read.

Then Sir *John Fenwick* and the Council were call'd in, and the Speaker told them, That the House thought fit that the Information of *Cardell Goodman* should be read. And the Information was read,

read, purporting, That there had been a Design to make an Insurrection, and seize on the Person of K. *William*, for Two Years last past; and that they had applyed themselves to King *James* for a Commission to justify their Proceedings, but he had refus'd to countenance it, and was angry they had made use of his Name in it: Then *Goodman* proceeds to give an Account of the Consult at the *King's-Head*, where it was resolved, to send *Charnock* to *France* to procure a Body of *French* Troops, agreeable to *Porter's* Deposition *Viva Voce*. And added, that to facilitate an Invasion, Sir *John Fenwick* used to send over a List of the Forces here, and how they were quarter'd, from time to time; and that after Collonel *Parker* had Escaped out of the Tower, this Informant ask'd Sir *John Fenwick*, how much Money was given to procure his Escape; and Sir *John* told him 300 *l.* and that it was agreed, if Collonel *Parker* did not bring timely Orders, this Informant and *Porter* should receive their Orders from Sir *John Fenwick*, as to what Forces they should raise. That as to keeping the Horses together, Sir *John* said it was dangerous, and they would certainly be seiz'd; but the best Way was to have a List of what Horses were in the Stables in and about *London*; and that this Informant and Capt. *Porter* accordingly, sent People to take an Account of the Stables.

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Mr. Serj. *Gould* call'd some of the Grand Jury, to give an Account what Evidence *Goodman* gave to induce them to find the Bill against Sir *John Fenwick*.

This Sir *John's* Council oppos'd and said, That it was part of a Grand Jurymen's Oath, to conceal the Evidence that was offer'd them; and that an Indictment itself was but an Accusation, and could not be given in Evidence against any Man; nor could they at a Tryal make use of any thing that was Sworn before the Grand Jury: But the House notwithstanding directed the Council for the Bill to proceed to examine them. And Mr. *Gracedue* and Mr. *Mead*, Two of the Grand Jury, depos'd, That *Goodman* gave the same Evi-

Sir *John's* Council oppose the calling a Grand Jurymen to give an Account of the Evidence *Goodman* gave to induce them to find the Bill against Sir *John*

dence to them as to the Consult at the *King's-Head*, and Sir *John Fenwick* and the rest of them agreeing to send *Charnock* to *France*, to procure Forces, as *Porter* had done here: And as was contained in *Goodman's* Information.

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Then Mr. Serj. *Gould* desir'd that the Record of *Cook's* Conviction (at whose Tryal the Prisoner at the Bar was mentioned to be concerned with him) might be read.

Sir *John's* Council oppose the reading the Record of *Cook's* Conviction.

Sir *Tho. Powis* said, he understood they were going to give in Evidence against Sir *John Fenwick* what had been Sworn against Mr. *Cook*, which would not be admitted in the Courts below, for then the Tryal of One Conspirator would be the Tryal of all the rest; and he hop'd it would not be allow'd of here.

What is sworn at the Tryal of one, no Evidence against another.

Sir *Bar. Shower* added, That though *Cook* and Sir *John* had been in the same Indictment, and had been try'd severally, ; what had been Sworn at the Tryal of one, would not have been allowed as Evidence against the other.

Mr. Serj. *Gould* answer'd, That these Gentlemen made their Objections as if they were in the inferiour Courts; but the House here were Judges of the Method of coming at the Truth, and that a Witness having been withdrawn by Artifice, they came before the House to supply that Defect.

The Council, &c. were order'd to withdraw.

Sir. *Rich. Temple*. They say this has never been done in inferiour Courts, and I am sure it has never yet been admitted here: That what was given in Evidence at the Tryal of one, should be given in Evidence against another Person who was not by, and had no Opportunity of defending himself against it.

Col. *Granvill*. Are we to read all the Tryals that are upon this Plot?

Sir *Tho. Littleton*. Why did you admit the Evidence of what he said to the Grand Jury? This is but the Evidence of what he said to a Petit Jury: If nothing but exact Proof was to be admitted, this Bill would not have been brought in; but this is to make as good Proof as the Nature of the Thing will bear.

Mr.

Mr. *Harly*. If you had at first determined, that you would not expect such Proof as is necessary at Law, you might very much have shortned this Business.

Mr. *How*. We are here to attain a Man, but we must not talk of Proof: I am sure if you do not find it with Proof, it must be against Proof; for I have heard that at *Cook's Tryal*, Two or Three swore that *Goodman* was not at the *King's-Head* when he swore he was.

It never was attempted before, to give a Record in Evidence against a Man who was no Party to the Record.

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Sir *Will. Williams*. I suppose no Gentleman of our Profession will say, that this hath been offer'd in any Court of Law: And, How many Judgments in the late Reign have been reversed, because they receiv'd that for Evidence which was not Evidence at Law? Your *Bill of Right* takes Notice of it.

Sol. Gen. As to what they say, that Sir *John Fenwick* was no Party to the Record, and therefore it can be no Evidence against him: Suppose *Goodman* had Sworn Sir *John Fenwick* was not at the *King's-Head*, Might not Sir *John* have produc'd a Witness to prove what he had Sworn?

Mr. *Price*. It is one thing when you produce a Record to convict or attain a Person, and another when it is to prove a Man perjured; or to invalidate his Testimony: For when Evidence is brought against a Prisoner, he has no way to lessen it but by what is collateral: And if the Witnesses have given a contrary Evidence at another Tryal, or the Party was acquitted, then the Record may be made use of against that Witness; but it may not be made use of to convict, or attain a Person.

But a Prisoner may make use of what was Sworn at another Tryal in his Defence at his own.

Att. Gen. I agree that the Conviction of *Cook*, nor any Evidence upon his Conviction can be Evidence against Sir *John Fenwick*: But 'tis one of the Allegations of the Bill, that several of these Gentlemen were present at this Consult (of which Sir *John Fenwick* is accus'd) and I suppose they produce it to make good this Allegation, and so I think

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think it may be properly us'd ; but I don't think it proper to examine what *Goodman* swore at *Cook's* Tryal.

Sir Charles Musgrave. The Council never said that *Cook* was not attainted ; I have not heard any Man doubt of it : Then if it be no Controversy between the Council, To what End was it brought hither ?

Resolv'd that
the Record
of *Cook's* Con-
viction be
read.

The Question was put, *That the Record of the Conviction of Peter Cook shall be read.*

Ays 181.

Noes 110.

The Council, &c. were call'd in again and acquainted, by *Mr. Speaker*, that the Record should be read, not as Evidence against *Sir John Fenwick*, but to prove the Allegations in the Bill, that *Cook* was attainted.

Mr. Serj. Gould then desir'd that they might show that *Goodman's* Evidence prevail'd to convict *Cook* ; and for that he would call some of the Jury, and some that were then Witnesses.

Sir John's
Council op-
pose the cal-
ling a Jury-
man to de-
pose what E-
vidence *Good-*
man gave at
Cook's Tryal.
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Sir Tho. Powis. You were pleas'd to give such a Reason for reading the Record, that if we had heard it before, we would not have troubled you to have withdrawn ; for it was proper to make out the Allegations in the Bill, that *Cook* was convicted ; but we apprehend they can carry it no further than what they have apply'd it to : They shall not call Witnesses to prove what was Sworn at the Tryal of *Cook*, where *Sir John Fenwick*, or any for him were not present to observe, or cross examine, or offer any thing to their Credit ; which possibly he might be furnish'd with, though *Cook* was not : I hope this will be no more allow'd of here than in another Place.

Serj. Lovel. We call these Witnesses only to prove that what *Goodman* did inform by that Paper, he did swear before a Jury.

Then they were order'd to withdraw.

Mr. Manly. I did not believe they would have insisted on it, for there was a Gentleman whom I thought, in the last Debate, had satisfied every body that this ought not to be done ; but they tell us, We are not to be guided by the Rules in *Westminster-Hall*, but by the Rules of Justice: I

am

am sure we ought not to seek a Way to the King's Favour by Voting against a Criminal for High Treason.

Mr. *Sloan*. Here is a Witness withdrawn by Sir *John Fenwick's* Friends; if they will produce him this shall be no Evidence against him: And the Question is, What this Witness did say when he was here? 'Tis not conclusive; but 'tis material for you to hear what he did say when he was upon his Oath.

Sir *Charles Musgrave*. For any Man to pretend to repeat exactly what was said at another Tryal, to me, is wonderful; and the least Variation may alter the Nature of the Thing: Besides, To what Purpose is it done, if it be not to the Prejudice of Sir *John Fenwick*? And by the same Rule, you may hear the Evidence that has been given at all the Tryals these Three Quarters of a Year.

Mr. *Sloan*. It is every Days Practice, between Party and Party, to hear what a Witness has said at another Tryal between the same Parties, if the Witness be dead.

Sir *Tho. Littleton*. You have heard what he swore before the Grand Jury already, and, What greater Objection is there against hearing what he said in another Case?

Mr. *Gery*. It is true, one Man is often allow'd to give Evidence, of what another swore, in the Courts below, but he must swear Truth at his Peril, for there he may be prosecuted if he does not; but if he does not say true here, and takes away this Man's Life by what he says, What Remedy is there against him here?

Mr. *Smith*. Truly, were there not a Place where the Witnesses are to be Sworn, and more particularly examined, I know not whether I should give Consent to the passing this Bill through your House, for the Witnesses against the Prisoner are not Sworn; so that we can only give our Opinion upon the Probability of the matter. And since there are Witnesses like to be offer'd here against *Goodman's* Testimony, it is not reasonable to hear what *Goodman* said for himself.

Sir *Godfrey Copley*. I can't but take Notice of what has been said in this Debate, That we had done as much as this comes to already: This makes me still more apprehensive, and to take care what we do now, since what this House does has so quick an Operation, and we are citing Presidents of this very Day already; and make one thing a Handle to draw on another.

Sir *H. Dutton Colt*. There must be Two Witnesses to the same Treason, by the last Act; and there were no other positive Witnesses against *Cook* but *Goodman* and *Porter*, so that it is plain he was convicted upon the Evidence of *Goodman*; and, What need any Person remember the Particulars that pass'd at that Tryal?

Resolv'd that Witnesses might be examined to what *Goodman* said at the Tryal of *Cook*.

Then the Question was put, *That the Council against Sir John Fenwick be allow'd to examine Witnesses, as to what Goodman swore at the Tryal of Cook.*

Ays 180.

Noes. 102.

Then, it being late, the Question was put, That they should adjourn, but it pass'd in the Negative; and about Forty, who were against the Bill, went away together.

The Council &c. being call'd again, Mr. *Speaker* told them they might examin Witnesses, as to what *Goodman* swore at *Cook's* Tryal.

Then Mr. *Collins* (one of *Cook's* Jury) was call'd.

He said, that *Goodman* depos'd at that Tryal, That he enquir'd for Capt. *Porter* at the *King's-Head*, and that Capt. *Porter* introduc'd him into the Company of Sir *John Fenwick* and the rest, who agreed to the sending *Charnock* into *France*.

Mr. *Comper*, another of the Petit Jury, was call'd.

He said *Goodman* depos'd at that Tryal, That he met Sir *John Fenwick*, &c. at the *King's-Head*, and they consulted concerning sending *Charnock* to *France*, to encourage the bringing over Forces.

Another Witness depos'd to the same Purpose.

Mr. *Speaker*. Can you say what Exception was taken to *Goodman's* Credit, and how it was answered?

Witness.

Witness. It was said he had been guilty of many Crimes; but it was answer'd, He had his Pardon, and was a very good Evidence.

Mr. Serj. *Gould* desir'd a Letter of Sir *John Fenwick* to his Lady might be read, wherein he look'd upon himself as having no Defence, and desir'd her to make an Interest with some of the Jury, that they might starve the rest.

Sir *John Fenwick's* Council oppos'd the reading of this Letter, because it could not be prov'd to be Sir *John's* Writing: They said that Collonel *Sidney's* Attainder had been reversed, because that Comparison of Hands was resolv'd by the Parliament, to be no Evidence of a Man's Hand-Writing, (and that they could not pretend to so much as that here:) And that in *Crosby's* Case in *Westminster-Hall*, the other Day, this Evidence was not allow'd; and *Crosby* was acquitted.

Likeness of
Hands no E-
vidence of a
Man's Hand
Writing.

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The Letter being shown to Mr. *Fowler*, Mr. *Speaker* ask'd him, If he knew that Paper, and where he had it? He said, he was at *Romney* when Sir *John Fenwick* was taken, and one *Webber*, who was taken with Sir *John*, sent for him, and desir'd him to put that Letter into the Post, and it was directed to Mrs. *Frances Farrer*, at the Countess of *Carlisle's*, in *Soho-Square*: That afterwards, Mr. *Mascal* of *Romney*, sent for the Examinant, and took the Letter and open'd it; and when he saw what was in it, this Examinant put his Mark upon it, and Mr. *Mascal* sent it to the Secretary of State.

Serj. *Lovel.* Was Sir *John Fenwick* in the same Room when *Webber* deliver'd it to you?

Fowler. Yes, but I question whether he saw Mr. *Webber* deliver it me, for he did it privately, as I thought.

Sir *Tho. Powis.* This Case comes short of Collonel *Sidney's*, for the Act recites that the Letter was found in his Closet, and prov'd by Comparison of Hands; and yet this is condemn'd by Act of Reversal, as illegal Evidence: But here is not so much as Proof by Comparison of Hands, or that it was in the Possession of Sir *John Fenwick*.

The Council for the Bill, at length, consulted to wave the reading of it; and having concluded their

A Letter of
Sir *John's* to
his Lady, con-
cerning her
practising
with the Ju-
ry, was not
admitted to
be read, be-
cause there
was no Proof
of its being
Sir *John's*
Writing.

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Mov'd to take
Mr. *Dighton*,
Sir *John*'s Sol-
licitor, into
Custody.

Evidence, Sir *John Fenwick*'s Council intimated, That they had already attended Twelve Hours, and had a great deal to answer, as to what had been offer'd against Sir *John*, but that they were so fatigued, they were in no Condition to go through with it to Night, and therefore, desir'd they might be allow'd 'till the next Morning to make their Observations: Mr. *Speaker* demanding if they had no Evidence to produce, it was answered, only a Record: Then the House agreed they should be allow'd 'till to morrow Morning, but resolv'd they would hear no living Witness for Sir *John* after this Night; and Mr. *Chancellor* proposing to take Mr. *Dighton*, Sir *John*'s Sollicitor, into Custody, for tampering with the Witnesses, as had been mentioned in the Debates; it was ordered that Mr. *Dighton* should attend next Morning: And it being half an Hour after Ten, the House adjourn'd 'till the next Morning Twelve a Clock.

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Sir *John*'s
Council enter
upon his De-
fence, and
first, Sir *Tho.*
Powis.

Martis 17 Nov. 1696. Sir *John Fenwick*, and the Council on both sides were call'd in, and the Speaker intimating to Sir *John*'s Council, that this was the Time for the Defence, Sir *Thomas Powis* said, he should insist upon Three Things in behalf of his Client,

1. The manner of proceeding, and the Method that had been taken in this Prosecution.
2. Observe what had been alledg'd against him in the Bill.
3. What sort of Proofs had been offer'd as Evidence.

The Impri-
sonment of
Counter, &c.
by an Act of
& *post facto*
mentioned.

As to the First, He acknowledged that every Man's Life and Fortune was subject to an Act of Parliament, but hop'd he might be permitted to offer some Reasons against their exercising their Legislative Power in the present Case: He confess'd, that those Persons who were imprison'd last Sessions by an Act, *ex post facto*, and subsequent to the Fact complain'd of, when it was pass'd into a Law, were legally committed; and he mentioned that Case as some Reason against this, that such Laws might not grow too familiar: He observ'd, that the Person to be Sentenc'd by this Bill was
forth

forth coming, that he had been indicted, and pleaded; and was ready to undergo his Tryal in the ordinary Methods of Justice: That the meanest Subject was entitled to a Tryal by a Jury, which was the Honour of our Government; and hop'd that Method would never be lay'd aside, though sometimes it might not have the Effect desir'd by it: That even the Regicides, who had actually murder'd the King, and were not fled, were admitted to this Tryal in the ordinary Courts of Justice, though a Bill of Attainder pass'd against the rest: That the Parliament had been so far from depriving Persons of their ordinary Tryals, that was Enacted in the Reign of *Edward VI.* that Persons Outlaw'd for Treason should be admitted to their Tryals, where they return'd within the Year; which they could not be by the Common Law.—— That it would be thought something extraordinary that the same Parliament that pass'd an Act requiring Two Witnesses in High Treason, should pass an Act to put a Man to Death without One legal Witness, and without allowing him any Tryal at all.—— That other Bills of Attainder, were pass'd against such Persons as fled from Justice (in which Case they might have been Outlaw'd at Common Law;) and some few had pass'd against Persons who were forth coming, but they were never mentioned without heavy Censures, and great Complaints against them.—— That this Case was not like the Duke of *Monmouth's*, who, though he was in the Kingdom, stood in Defiance of all Courts of Justice; but this Gentleman had pleaded, and submitted to be try'd.—— That indeed *Roger Mortimer*, in the Reign of *Edw. III.* was attainted, and executed without Tryal; but in 28 *Edw. III.* it was reversed, because he was not brought to Judgment against the Laws of the Land; the like was done in the Case of *Edmund Earl of Arrundel*, but in the 28 *Edw. III.* there was *An Act of Reversal*, declaring he was unduly put to Death; and that the Statute, by which he was attainted, was Void, Erroneous, and Null: That the Case of *Thomas Earl of Essex*, 32 *Hen. VIII.* was censured by

The Regi-
cides admit-
ted to a Try-
al by Jury.

Coke, who also takes Notice, that he who thus died, had attempted the like against another. That the Attainder of *Thomas Seymour*, Admiral of *England*, (who was not executed) was severely censured by the learned Author of the *History of the Reformation*: And that it appeared by the Act of Reversal, of the Attainder of the Earl of *Straford*, that that Parliament look'd upon those Proceedings as evil and unjust, and ordered them to be taken off the File, or otherwise defac'd and obliterated; that they might not be visible to after Ages, or brought into Example to the Prejudice of any Person whatsoever. — Then Sir *Thomas* proceeded to observe the Allegations in the Bill, and he said, that not only by the Laws of *England* but of all Nations, the Things to which a Person was to make his Defence in Capital Cases, must be both alledg'd and prov'd against him to make the Charge compleat; such as requir'd an Answer: And that this Bill of Attainder did not so much as alledge, or say that Sir *John Fenwick* was guilty of the Treason whereof he was indicted; which occasion'd their not producing Witnesses to that, and several other Things the King's Council had entered upon, and were quite out of the Bill, though the House had permitted them to examine Witnesses to them. That as to the first thing alledg'd in the Bill, that Sir *John Fenwick* was indicted, they did admit it, but that was no more than an Accusation, and what might be the Fortune of a very innocent Man. That the next Thing the Bill charg'd them with, was some unfair Prevarications, by which means he put off his Tryal, but this had not been prov'd; and if it had, it did not amount to High Treason: That the Bill in the next Place, recites that *Goodman* is withdrawn, but does not say it was by the Procurement or Privy of Sir *John Fenwick*, and so no Offence of his; and in case the Witness had died, the House would not have thought that to have been a good Reason for a Bill of Attainder, unless Sir *John* had contributed to it. — That from these Premises it was Enacted, That Sir *John* should be attainted of High Treason, and he submitted to it

it, if upon such Indictments, Posterity would think it reasonably Enacted.— That as to what the other side call'd Proofs, he thought it would be too much at once to make a Law to condemn a Man to Death subsequent to the Fact, and to do it upon doubtful and uncertain Evidence; or rather, upon no Proof at all: And that if Mr. St. John's Position, in my Lord *Strafford's* Case, was admitted, *That a subsequent Law might be made to take away a Man's Life without any Evidence, other than the private Opinion or Conscience of every particular Law-Maker.* Rushw. 677. then none are safe; that it was said we liv'd under an Establishment that every Man did, or might know the Law he was to act by; but at this Rate, none but Prophets could live amongst us. Next he observ'd, That the other side had betaken themselves to what was not in the Bill; which was not agreeable to Justice; And that to make out what they insisted on, they had produc'd but One Person *Viva Voce*, and he was not upon Oath. That in my Lord *Strafford's* Case, the Proceedings were first by Impeachment, and the Witnesses had been examined upon Oath in the House of Peers, and the Bill of Attainder recited that it had been fully prov'd; but for a Bill to begin originally in this Place, and that they should proceed to give Judgment whereby a Man was to be depriv'd of his Life, his Blood corrupted, and all that he has in the World forfeited upon bare Allegations, without the Sanction of an Oath was extreamly hard: And how Mr. *Porter* should gain such Credit, that such an Act should pass on his Parole, was very strange, when he had confess'd himself guilty of the Assassination Plot, and was now drudging for his Pardon.— That their next Evidence, was a Paper that they call'd an Examination of *Goodman's* before a Justice of Peace, but that in Truth he was not examin'd; and it was only what *Goodman* thought fit to write down without: Then they resort to what *Goodman* swore at another Tryal, where Sir *John Fenwick* was neither Party nor present; but there were such Reasons to be brought against that sort of Evidence, from natural

The unreasonableness of bringing in Bills of Attainder before any legal Proof made of the Party's Offence.

No Evidence
can be given
against a Man
on a Tryal for
his Life, but
in his Presence

Sir John
Hawles's Opi-
nion, that a
Conspiracy to
levy War was
not an Overt-
Act of com-
passing the
King's Death.

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Justice, that it was never admitted in any Court, and that it was contrary to a fundamental Rule in our Law, which admitted no Evidence to be given against a Man upon a Tryal for his Life, but in his Presence; that he might have an Opportunity of cross examining him: Besides that, *Goodman* swore then to save his Life, and it was probable he had withdrawn himself, to avoid swearing, what went against his Conscience, again. That as to *Dighton's* enquiring what *Roe* could say to discredit *Goodman's* Evidence, that did not imply any Design of procuring *Goodman* to withdraw himself, but rather the contrary; however, this was before Sir *John* imploy'd *Dighton* as his Solicitor, and was done without any Directions from him: Another thing Sir *Thomas Powis* observ'd was, That the matter, on which the Indictment at the *Old-Bailey* was founded, did not amount to High Treason, in the Opinion even of the King's Council, at least of the present Solicitor-General; for the Indictment says, There was a Conspiracy and Agreement to send *Charnock* to *France* to invite over Foreign Troops; but does not say he was sent any more than the Bill does: Now, a Consult and Agreement to do a Thing of this Nature, where the Thing was not actually done, according to this learned Author (*Mr. Solicitor*) is not a sufficient Overt-Act of Treason; for he says in the Case of my Lord *Russel*, whose Innocence he has vindicated, that a Conspiracy or Agreement to levy War, is not Treason, without actual levying War: and of that Opinion were the Chief Justices *Coke* and *Hale*. Now, calling in Forces is levying War, but a Conspiracy to levy War, say they, is not Treason unless it be actually done: We have not thought fit to produce Witnesses, because we do not find Sir *John* is charg'd with Treason throughout the Bill, and we shall not engage in the Defence of a Matter not charg'd upon him: And I hope you will not make a President, where a Person is indicted and ready to abide his Tryal in the ordinary Course of Justice, that he shall be taken out of the Hands of the Ordinary Judges, and be brought to this Bar to receive his Tryal.

Sir

Sir Bar. Shower added, That though there had been many Presidents of Attainders, there was not one for High Treason upon a single Act: Which, if Treason, was determinable at Common Law. That Bishop Burnet, in his History of the Reformation, for which he had the Thanks of this House, says, *That such Bills could not be enough condemned, for that they were a breach of the most sacred and unalterable Rules of Justice.* That indeed, he must admit *Salus Populi*, to be *Suprema Lex*; but this being for an Act done last May was Twelve-month, the Danger pass'd, and the Persons executed that were concern'd, and all the Danger over that might be apprehended from that Act, and no Fear now concerning it, he hop'd, they would not use their extraordinary Legislative Power, to punish that Fact, which might be punish'd by the ordinary Rules of Law. That tho' they might think it reasonable to Enact, that *Goodman's* Depositions should be read at the Tryal; he hop'd, they would not think it reasonable to condemn Sir John Fenwick for High Treason, without Tryal; and put him in a worse Condition, than if *Goodman* were here. For then, he would have had a Tryal by a Jury, the Benefit of his Challenges, the Witnesses sworn, and might have made his Exceptions to their Testimony: All which, he was depriv'd of here. He submitted it therefore to them, Whether the Legislative Power could justly do more in this Case, than supply the want of that Witness; and put Sir John in the same Circumstances he would have been, if *Goodman* had not been withdrawn? Besides, says he, Is there any Allegation in the Bill, that *Goodman* is withdrawn by the procurement of Sir John Fenwick? Or is there, indeed, any Proof made, that *Goodman* is withdrawn at all: And he might be in the same Lodging, where he was after he was admitted to Bail, for ought appear'd. And should he appear again, and contradict the Testimony he had given, it might then be too late to do Justice to Sir John Fenwick. — That as to the Overt-Acts laid in the Indictments, *The buying of Horses, Arms, &c.* None of them had been proved, unless

Sir Bar.
Shower's Arguments
against the
Bill.

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He urges,
that the most
that could be
done in Justice,
was to supply the
want of the
absent Witness,

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That a Consult, in my Lord *Russel's* Case, was held to be no Overt-Act, and that was all that was pretended to be proved here.

less the Consult. Now, in my Lord *Russel's* Indictment, there was not only a Consult to seize the Guards, laid as an Overt-Act; but it was proved, they sent Sir *John Armstrong* to view them, in order to seize them. And yet the Act of Reversal, declares he was unlawfully Convicted, upon strain'd Constructions of Treasons. Now, We say, the Consulting to seize the Guards, or to invite Foreign Forces, are either of them Consults to Levy War; and if the one is not Treason, neither is the other. And as to Adhering to the King's Enemies, He must either have been present, aiding, and abetting them; or have sent them Arms, Ammunition, Money, &c. or he could not be brought within that Branch of the Statute. That indeed, in Dr. *Story's* Case, in *Dyer*, who writ a Letter to the *Spanish* King, to invite him to invade *England*; *Story* was Attainted upon that, but that Judgment had been questioned, and was denied to be Law: But that, here, there was no Sending proved, but only an Agreement to send one. Now, If it were but a Doubt, Whether this was Treason or no, he hop'd they would not proceed in a Legislative Way to Condemn him; especially, when he was deprived of the Advantage of insisting on these Points, on a Tryal at Law.

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Mr. Serjeant
Gould's Reply.

Mr. Serjeant *Gould* reply'd, He never thought the Parliament would take Things out of the ordinary Course of Justice; or Attaint a Person of Treason, unless in Cases extraordinary. But that the Gentlemen, on the other Side, had admitted, That in Cases extraordinary, they have done it. And they had likewise agreed, That there were some Treasons reserv'd by the 25 *Ed. III.* to be declared by Parliament. But what they insisted on, was, That the Party had been Indicted, and pleaded *Not Guilty*, and might be Try'd by the ordinary Course of Law; and therefore, they looked upon it as improper, to bring it into Parliament. Now, The Truth was, they had been deprived of the Evidence that was necessary, in the ordinary Course of Proceedings; and in such Cases, it had been usual for the Parliament to interpose. And as to what had been urged, That what was offer'd, was

was not Legal Evidence: They were now before the Parliament, who would make use of such Informations, as might give them any light into the Matter; and they were the Judges of their own Methods, and how far Sir *John Fenwick* was concern'd, upon the Circumstances before them. And whereas it was said, this Power had seldom been exerted, but where the Party was withdrawn from Justice, and could not be come at by the ordinary Course. That this was a parallel Case, they could not come at Justice in the ordinary Course, their Witness having been tampered with, and withdrawn: And therefore, by their own Arguments, he thought it proper to come into Parliament.

Mr. Serj. *Lovel* observed, That the 25 of *Ed. III.* was only declaratory of the Common Law; for all the particular Treasons there specified, were Treason before. But it was designed to restrain the Judges, who before, had a greater liberty in constructive and anumalative Treasons; and therefore Enacted, That if any other Matter should be thought Treason, than is there particularly mentioned, they should not proceed to Judgment, but acquaint the King in Parliament. And that one Witness was sufficient to Convict the Party of any of these Treasons, till 1 *Ed. VI. c. 12.* And even in that, there was an Exception as to the Coining; and one Witness is sufficient, in that Species of Treason, at this Day. That the Crime was not at all the less, because they had but one Witness; nor were they endeavouring to obtain a Law, *ex post facto*, as was suggested by the other Side, to make that Treason, which was not so before; but only to bring the Crime to be tried, which was not triable by the ordinary Course, a Witness being withdrawn. And as Sir *John Fenwick* might, before the 1 *Ed. VI.* have been Convicted by one Witness; no body could say, but the Parliament might, justly enough, repeal all, or any part of that Law. For the Law was not changed by that Act, as to the Crime it self, but only as to the Number of Witnesses, that were required to prove it. And he did confess, that the Evidence they had given, was not such as the Law required: But that

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One Witness
sufficient in
Treason, for
Counterfeit-
ing the Coin.

Resolv'd by
the Judges,
that Consult-
ing to Levy
War, was
Treason.

that the House in their Legislative Capacity, were not confined to the Evidence that a Jury must have below. That notwithstanding what had been objected, That Consulting to Levy War, was not Treason: This was the very Case of *Peter Cook*, and the same Council, had urged the same Arguments at his Tryal. But it was unanimously resolved by the Judges then, that it was Treason. And whereas it had been demanded, What Mischief could ensue, if this Gentleman were left to the ordinary Course of Law? He answered, It had been the Wisdom of all Ages, to make Laws, to punish such, as by their Artifice, would evade the Law. And if such a Crime as this, committed against the Body of a Nation, should go unpunish'd, because the Offender could not be come at in the ordinary Course, the Nation were in a dangerous Condition. And, he thought, this extraordinary Case, did deserve an extraordinary Punishment.

Sir *Bar. Shower* begged leave to say, That although no Man abhorred such Consults more than himself; yet he did not think, that Discourses were such Overt-Acts of High Treason, as deserved to be punish'd with Death.

Then Sir *John Fenwick*, and the Council, withdrew: After which, Admiral *Russel*, and the other Members accused in Sir *John Fenwick's* Information, desired Sir *John* might be ask'd, What Proof or Foundation he had for the Charge against them, and the rest he had mentioned? Accordingly, Sir *John* was called in, and Mr. *Speaker* told him, the House expected he should give them an Account, what he knew, in relation to those Persons he had accused: And in the first Place, What he knew of the Lord *Godolphin*. Sir *John* answered, he was under a double Prosecution, and what he should say, might turn to his Prejudice; and therefore in these Circumstances, he hop'd the House would not insist upon it. Whereupon, he was ordered to withdraw again.

Mr. *Poultney* observed, That one of the Allegations in the Bill was, That Sir *John's* Tryal was put off, upon several repeated Pretences of his making a Confession: That his Council took No-
tice,

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Page 285.

tice, that Allegation was not proved; and that the Council for the Bill, referred themselves to Mr. *Vernon* to prove it. He therefore mov'd, that Sir *John Fenwick* might be call'd in again, while Mr. *Vernon* gave his Evidence.

Whereupon, it was resolved upon the Question, That Sir *John* and his Council should be called in, while Mr. *Vernon* gave his Evidence. And they came in accordingly.

Then Mr. *Vernon* related, how often Sir *John's* Tryal had been put off, on the application of himself, or his Friends, to his Majesty, or the Lords Justices; pretending what Discoveries Sir *John* would make for the King's Service. He said, The first Application was made by the Lady *Mary Fenwick*, the 30th of *June*; when she petitioned some Friends might come to him, to direct him how to make his Application to the King: And proposed, that somebody might be sent over to the King. That she afterwards offer'd to go over herself, and said, If it was not as much for the King's Service, as Sir *J. Fenwick's* Interest, she would not undertake the Journey: And being admitted to speak with Sir *John* in private, in order to her Journey, she refused to go. But that Sir *John* having obtained the Favour of one of the Lords Justices to go to him, acquainted that Lord, he had sent to the King by another Hand. Whereupon, the Lords Justices waited till the middle of *August*, when an Answer came from the King, that the King had not received any great Satisfaction by the Message, but that Sir *John* should be Try'd; and if he had any Thing to confess, it should be sent him in Writing. That the Judges being then upon their Circuits, Sir *John* could not be Try'd at that time: And the same Lord went to Sir *John* again, and received a Paper from Sir *John*, which he sent to the King: And the King's Answer was, That he should prove it. That on the 10th of *September*, the Declarant (Mr. *Vernon*,) was order'd to go to Sir *John*; but Sir *John* alledged, he could say nothing more, and must prepare for his Tryal. However, he desired to see the same Lord that had been with him before; who went to him when he came

Mr. *Vernon's* Evidence of the Artifice used by Sir *John*, to delay his Tryal.

came from the *Bath*: And he brought Word, Sir *John* would make out to the King, what he had said. That thereupon, the Declarant was sent to Sir *John* again; and that he dictated a Paper, which was sent to the King; and his Tryal was again put off: And it was the beginning of *October*, before they received the King's Answer.

To this Sir *John*'s Council answered, That if he had used some Prevarication to delay and put off his Tryal, that was but what was very usual, and could not amount to High Treason: And they hop'd, they would not make a Law to inflict the greatest Punishment, for such an Artifice.

Sir *John* and his Council being withdrawn, Mr. *Sloan* mov'd, That the Paper mentioned to be sent the King, by Sir *John*, should be read in his presence; it being produced as Evidence against him. But it was agreed it should not. And it was ordered, the Council should be discharged any further Attendance at that time.

Then Mr. *Methwin* mov'd to read the Bill, a second time; and it was read accordingly.

And being afterwards open'd by Mr. *Speaker*, and Mr. *Speaker* expecting some Time; and no Member rising to speak, he demanded, If he should put the Question of Commitment?

Then Sir *Thomas Dyke* rose up, and said, He hop'd he would not put the Question of Commitment, till some Exception was made to the Bill; for it was as liable to Exception, as any Bill that had been brought in a great while.—— That indeed, it was a tender Subject to speak to; the pretence of the Bill being, for the Preservation of the King and Government. But though that had been often said, he had not seen it prov'd, that they were in any Danger: And therefore, he thought himself at liberty to offer his Reasons against the Bill. That the Parliament had a Power to make such a Law, was granted; but, he thought, it ought not to be us'd but upon extraordinary Occasions, when the Offenders were so big, they would not otherwise be brought to Justice: Or, where the Crimes did not fall under the denomination of the Law; which was not the present Case. That
the

Debates upon
the second
reading of
the Bill.

the Witnesses were not upon Oath, and indeed, there was but one Witness; and therefore he was against the Bill, as of dangerous Consequence.

Mr. *Poultney* said, That it being granted, they had a Power to pass such a Bill; the principal Thing that remain'd to be consider'd, was, Whether they had sufficient Grounds to exert that Power? He observ'd, there could not be a greater Offence, for it was High Treason; and the Overt-Act laid in the Bill, was the inviting over a *French* Power; which was a Crime, that could admit of no Aggravation. That indeed, the Council at the Bar had made a Doubt, Whether the Matter laid in the Indictment, was a sufficient Overt-Act of High-Treason? And had drawn his Argument from a Book, written by a learned Member of the House. But he presum'd, that Gentleman could easily have answer'd himself; having written a Book, call'd, *His Majesty and the Government Vindicated*: By which, he had endeavoured to overthrow the Arguments of the Learned Member.—— That the ill Consequence, and Injustice, of punishing a Man by a Law, *ex post facto*, had been urg'd; but that the Parliament might declare that to be a Crime, which was not so before, he thought no body doubted; and without that Power, the Clause in the 25 of *Ed. III.* signified nothing. And that it could not be a greater Injustice, to supply a defect of Evidence, where the Fact committed, was against a known Law, at the time it was committed; and especially, where the Prisoner had occasion'd that defect (as he believ'd) himself. That he did not aim at his Life, but it must be believ'd, he was engag'd in great Matters, to bring about such a Design: And he propos'd the doing of it, in order to get his Confession.—— That there was sufficient Evidence to convince him, that Sir *John* was Guilty; and if the Bill miscarried, there was the greatest Blow that could be given to the Constitution: And for these Reasons, he was for committing the Bill.

Mr. *Newport* said, That in this Case, he look'd upon himself as a Judge; and, that though of his own private knowledge, he knew that Sir *John*
Fenwick

Judges ought
not to go ac-
cording to
their private
knowledge.

Fenwick was Guilty; yet, as a Judge, he thought that ought not to weigh with him: So that he ought to go according to his judicial Knowledge, and not his private Knowledge. And he instanc'd in a Case, in the Reign of *Hen. IV.* where two Men travelling together, one kill'd the other, and the Judge saw it. And afterwards, that Judge came the same Circuit, and an innocent Man was try'd for it; and yet, the Judge, was oblig'd to go according to his judicial Knowledge: And all he could do in that Case, was, to respite the Judgment, and apply to the King, for the Man's Pardon.——

That here was but one Legal Witness, which was *Capt. Porter*; and it would seem a little strange, that the Commons of *England*, who were so very careful of the Lives of the Subject, to provide, that there should be two Witnesses to one Species of Treason, but last Sessions; should so soon be Attainting a Man, for Treason, upon one single Evidence. That they liv'd in an unsettled Time, and he did not know, how soon the President might be turn'd upon them. That among the Irregularities in the Tryals of the late Reign, he thought the Case of *Mr. Sidney* one of the greatest Strains: Where my Lord *Howard* being one Evidence against him, a Book was produc'd, that he had written against *Sir Robert Filmore*, as another; which was construed to be calculated for a Treason, that had not been committed above four Months. But that Attainder had been revers'd, it being thought hard, to convict him upon that Evidence.

The Lord
Preston par-
don'd, on
making a
pretended
Discovery,
which he af-
terwards de-
nied.

That he could not imagine, why this Gentleman was not Try'd before, while there was two Witnesses; for it might easily have been discover'd, his pretences to a Confession, was but an Artifice; and such a one, as his Brother had us'd but two or three Years before. That the Lord *Preston* being Attainted, was put upon doing something to obtain his Pardon; and he made an ingenious Confession, as it was call'd, and accus'd most of the Great Men: And though this was deliver'd to the King, under his own Hand, yet when he had his Pardon, he deny'd every Word of it, and said, he had

had done it to save his own Life. And if the Ministry had made another Mistake now, he was not for helping it, by passing a Bill of Attainder. Nor did he approve, the Act that was made for boiling the Bishop of *Rocheſter's* Cook alive, who had poison'd the Bishop of *Rocheſter's* Broth; it being made after the Fact committed. That he was as zealous for this Government, as any Man; but for the Reasons he had offer'd, was againſt the Bill.

Page 289.
One boil'd
alive, for
poisoning
People.

Mr. *Sollicitor General* rose up next: He began with observing, That High Treason was the greatest Crime that could be committed, because it tended to the Subversion of the Government. Then he took Notice, that the Prisoner's Council had insinuated, That the Matter charg'd, was not High Treason; and had founded their Opinion, upon what himself had advanc'd, concerning a Conspiracy to Levy War, That that was not Treason. But, he said, this was not the Case; for that it had never been doubted by any one, but that a Design to Depose the King, was High Treason within the Stat. 25 *Ed.* III. and that very Author (himself) who vindicated my Lord *Ruffel*, said as much. And he said, the Matter there, was only the sending some Persons to view the Guards, (which was construed to be in order to seize the King) but this was not so much a Conspiracy to Levy War against the King, as against his Guards. [*Quer. If Levying War against any of the King's Forces, is not Levying War against the King? And if so, Then Quer. If Attacking his Guards, who attend his Person, can bear any other Construction?*]

That as to the Objection of its being an ill Preſident, He was not afraid, of a Preſident of this kind: And that there had been more Men destroyed, by the irregular Judgment of a Commission of *Oyer* and *Terminer*, than by all the Acts of *Attainder* that had been made, whether Legal or Illegal. That as to the Attainders of *Cromwel* and *Mortimer*, which had been censur'd by my Lord *Coke*, they did not come up to this, for they were Condemn'd without being heard: But that Sir *John Fenwick* had had a fairer Hearing, than ever any one had in Parliament before, in a Capital Matter.—

Lord *Cromwel*
and *Mortimer*
attainted,
without being
heard.

Page 290.

A Judge
ought to be a
Witness for
the Prisoner,
if he knows
any thing
that may ac-
quit him.

ter.— That in the Case of my Lord *Strafford*, he had Council only to assist him, where a Matter of Law arose; but here, the Council assisted the Prisoner in Matters of Fact, as well as Law, and made Answers for him.— That indeed, the Act made last Sessions, requir'd two Witnesses; and so did the Law before that, in Cases of Treason: But that was to be understood, only to bind the inferiour Courts; and that though they gave them Rules to proceed by, they themselves were not bound by them, but might act by other Rules. That it was one Thing, where he commanded his Servant to do a Thing, and another when he acted himself.— That in the Case quoted in *Hen. IV.* the Judge would have been blam'd, if he had acted in that manner, at this Day; for though he acknowledg'd, a Judge ought not to judge according to his private Knowledge, yet, if he knows any Thing, that may Acquit or Convict a Prisoner, that is not commonly known, he ought to go down from the Bench, and give Evidence of his Knowledge: For the procuring a Pardon afterwards, would not make the Prisoner Satisfaction; there being some Forfeitures, that a Pardon does not restore. But in this Case, he said, they acted in both Capacities, of Judge and Jury; and, as he thought, a Jurymen might acquit upon his private Knowledge, so the Members of the House, might make use of their private Knowledge, to acquit the Prisoner or convict him.— That for his part, he thought the Matter he was charg'd with, was High Treason, and did believe Sir *John* was Guilty of it; and therefore he was for committing the Bill.

Mr. *Harcourt* said, He agreed, that High Treason was the Highest Crime; and that the Matter recited in the Bill, was High Treason: But held, that the greater the Crime was, the clearer the Proof ought to be. That he thought it was no Argument, because they could repeal *Magna Charta*, and all subsequent Laws, that therefore they ought to do it. And he must see a better Reason given for it, before he consented to this Bill.

That he did not remember any one President, for attainting a Person who was in Custody, and
forth-

forth-coming, but what had been universally brand-
 ed: And that they were rather Reproaches to the
 Ill Reigns they were made in, and to be mark'd
 out as Rocks for us to avoid, than Patterns to be
 imitated.—— That though this had been call'd
 a Tryal, He knew no Tryal for Treason, but *per*
Judiciam parium, by a Jury; or, *per Legem Terræ*,
 which included Impeachments in Parliament. That
 this was an odd sort of a Tryal, if it must be call'd
 one, where the Person had a Chance to be hang'd,
 but none to be sav'd: For if, upon this Proceed-
 ing, Sir John should be thought never so Innocent,
 it was not in the Power of the House, to prevent
 his undergoing another Tryal; which was con-
 trary to all Rules. That whether they were to
 be consider'd in the Capacity of Judges or Jury-
 men, He never yet heard, of a Judge or Jurymen
 before, but was upon Oath; and the Witnesses
 were upon Oath: But here, all those material Cir-
 cumstances were wanting.—— That my Lord
 Coke's Definition of a Judge's Discretion, was; He
 must *discernere per Legem*; and that where Judges
 made the Law their Rule, they could never err.
 But if the arbitrary Dictates of their own Fancies,
 which my Lord Coke call'd, *the crooked Cord of*
Discretion, were the Rule they went by, endless
 Errors must be the effect of such Judgments.——
 That here was but one Witness, supposing he was
 upon Oath; the rest was but presumptive Evi-
 dence: And it was a Rule, he never heard contra-
 dicted, that Presumptions might be made in Fa-
 vour of Life, but never to Convict a Man. Tho'
 this was admitted to be no Evidence in the Courts
 below; all was answer'd, by calling it Parliamen-
 tary Proceedings: But he begg'd leave, in Vindi-
 cation of those Courts, to say, That whatever the
 Rules in *Westminster-Hall* were, 'twas not there-
 fore Reason, because 'twas a Rule: But because
 'twas Reason, and Reason approv'd of by long Ex-
 perience, and therefore 'twas a Rule: And in this
 they ought to be imitated. And he would not have
 those Rules thought Matters of Form, but Sub-
 stance, or rather part of the Law it self.——
 That if no Gentleman could give a Reason, Why

Bills of At-
 tainder, uni-
 versally
 branded,
 where the Of-
 fender was
 forth-coming.

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the Testimony of one Witness, and he not upon Oath, should be deem'd sufficient Evidence, but they must resort to their Parliamentary Discretion, to supply that Defect. 'Twas such a Discretion as he should always disclaim; and hop'd they would reject the Bill.

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Suggested by
the Court
Party that
they had no
Design against
Sir John's
Life, but to
bring him to
a Confession.

My Lord *Cutts* rose up next, and desir'd they would consider, what a Condition they had been in, if this Treason had taken effect: And though it was disappointed then, he said, he did not know how near the like Attempt might be of being put in Execution at present. That one of the wisest *Romans* had observ'd, That a Man who would consider his Duty aright, must consider the Matter in all its Parts and Circumstances; and when that was done, should act adequate, as well to the Community, as to Himself, and his Neighbour. And he desir'd those Gentlemen, who express'd so much Tenderness in this Case, to have some for the Government and themselves.— That he did agree, if there was nothing but Presumption, that ought to be in Favour of Life. But, he thought, the Prisoner stood Convicted of High Treason, by the highest Conviction upon Earth, viz. The general Consent of all Mankind. That he believ'd, there was not a Man within those Walls, or without, who doubted it.— But still, he did not doubt, if Sir *John Fenwick* would, before Things were brought to the last Extremity, tell the Truth, and leave off Dissembling, he would find Favour.— That whereas it had been said, It would seem strange to After-Ages, that the same Parliament should pass the Bill, for Regulating of Tryals in Treason, and this Bill of Attainder: He answer'd, That whatever was design'd for the Preservation of a Creature, ought not to be made use of to its Destruction. Now, that Bill was design'd for their Preservation, to screen them against arbitrary Power, and the Malice of false Witnesses. This Bill was brought in, to screen both them and the Government from their Enemies, both abroad and at home: And therefore, he thought that Bill no Objection against this; especially, seeing that Act only gave Rules to inferiour Courts. That it was
very

very obvious, if this Power were lodg'd in the Judges, what ill Use might be made of it; but that there was not the same Danger to be apprehended from the House. And for these, and some other Reasons that had been before urg'd by other Members, he was for passing the Bill.

Mr. *Pelham* held, That the *Lex Terræ* did crave the Observation of it, even from the Legislature: And that they ought to have two Witnesses, before they pass'd an Act of Attainder. That *Algernon Sidney* stood upon it, as his Natural Right, that he ought not to be Convicted by one Witness: And insisted, that both the Laws of God and Man, requir'd two: And if this were so, there ought to be two in Proceedings in Parliament. He did not mean, but that if such a Law was pass'd, all were bound by it; but in some Sense it might be said, they could not do what was not just for them to do, and agreeable to the Trust reposed in them.----

That the Gentleman who said, he had rather be Try'd by a Jury, than the House of Commons, was not much to be blamed; for he had seen that done in the House of Commons, which made him not very fond of that Tryal. He had sat there, when Six or Seven Noblemen, had been declar'd Enemies to the Kingdom, without any Evidence at all; and the Reason given, was something like what was given now. The Power of Parliaments, was brought as an Argument then; and it was said, it was only in order to an Impeachment, though no Impeachment follow'd: And thus they were branded, and expos'd to the Fury of the People. That he did not know what Facts might arise, and what sort of Parliaments there might be hereafter: And he was very unwilling a President should be made, contrary to the usage of all other Courts.

Sir *Thomas Littleton* said, Whether this was Legal Evidence or not, did not weigh with him; since he, and all Mankind, were satisfied the Prisoner was Guilty. And he did suppose, that if two Persons had actually seen Sir *John Fenwick* kill the King, and they had afterwards been convey'd away, after they had sworn it before the Grand Jury; he believ'd, the House would have made no

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Scruple of Attainting him for it, tho, in that Case, there was never a Witness left. And, he thought, they were not to stand upon those little Niceties; or be bound by the formal Proceedings of other Courts, when the Government was at Stake. That they had had Plot upon Plot; and there had been so much said of the *Lancashire* Plot without Doors, that he did not know but they might get an Ill Name to themselves. That they had this Power to exert upon extraordinary Occasions; and if they would not use it, where a Person had endeavoured the Subversion of the Government; he believ'd, those that sent them thither, would hardly send them any more.

Mr. *How* said, He should not be afraid of that Argument, of being sent no more, if he was against the Bill: That he had been often told so, but he found the People he liv'd amongst, us'd him better every Day.— That though it were true, they were not tied up by the Rules of *Westminster-Hall*, yet what was Reason and Justice in *Westminster-Hall*, was so every where. And he took the Points that had been spoken of, to be grounded on Reason and Justice, and so far they ought to pursue them. That two Witnesses were not requir'd, for fear the Courts at *Westminster* should do amiss; for they were answerable for every Thing they did, that was Ill: But two Witnesses were allow'd the People of *England*, that they might have a fair Tryal; and because it was thought conformable to the Laws of God, of Reason, and of all Nations. And to say a Man's Life might be taken away by two Witnesses in one Place, and by one in another; made it uncertain, how a Man was to be Convicted of a Crime that might forfeit his Life; which was not admitted in any Country whatever.— That here they carried it still further, and held, That there was no need of any Witness at all: For if every Gentleman was to be guided by his private Opinion, there was none of them, but before they came into the House, had conceiv'd some Judgment of his Guilt. But had he been Attainted without other Evidence, every one would have told them, that would have been an unjust Judgment.

Judgment. That whereas it had been said, A Man would entrust himself with that, with which he would not trust his Servant: Truly, he said, if an Error or Crime was to be committed, he had rather his Servant did it, than himself. And he never thought the Evidence of one Witness, which had been so much complain'd of formerly, would have been endeavour'd to be supported in these Days. That they had, indeed, by a Law, prevented People being Executed by an Arbitrary Power, and in an unlawful Manner, in *Westminster-Hall*: But if they gave this Example, they might be perpetually Executed here; and the Subject would be never the safer, for the Bill of Treasons. That a Hundred Mistakes in *Westminster-Hall*, were not of that Consequence; because they might be call'd to an Account, if they transgress'd. But this House only, could make the Nation Unhappy; because they only, could establish Arbitrary Power and Misery upon the Nation, by a Law.— That in my Lord *Delamere's* Case, there was one positive Witness, and circumstantial Evidence; but this the Lords did not think sufficient to convict him: And he hop'd, no Consideration would induce them to do that, which they should certainly have blamed them for doing. And tho' some said, They did not fear the Consequence of this: He believ'd, if Sir *John Fenwick* had been told, when he was Major-General in King *James's* Army, that any Member there should have sat upon his Life, he would have laugh'd at it; but yet that had happen'd. And he had seen Parties hang one another with that Violence, that he hop'd they should not see again: But such was the Unhappiness of this Nation, that at one time or other, every one might be concern'd, and have a Proceeding of this Sort against him. That some Gentlemen said, they did not aim at the Prisoner's Blood, but his Confession; and so he was, in a manner, to be rack'd to Death, from one reading of the Bill, to another; and possibly, might come to be hang'd, drawn, and quarter'd at last; not for High Treason, but for not confessing it. And this, he took, to be the most dangerous Argument that had been urg'd;

The Lord *Delamere* acquitted, because there was but one Witness against him,

and he verily believ'd, Sir *John Fenwick* did not know more, or even so much, as he had said already.— That as to the great Argument, the Safety of the Government; He did not see, how the Safety of the Government depended upon his Execution; or that it would be a Penny the worse, if the Bill did not pass. That there had been four or five Persons legally Convicted, and Executed; which was sufficient to deter others from offending in like manner. That, he believ'd, Sir *John* had discover'd all he knew, and that Plot had been utterly disappointed: And should they proceed to a Bill of Attainder, unless the Matter were of the greatest Consequence? The Preamble of the Bill for Attainting the Duke of *Monmouth*, gave a substantial Reason for it: That he was in Arms, and could not be brought to Justice; which imply'd, that if he could have been brought to Justice, they would not have Attainted him. That his private Opinion should not govern him in this Case; and upon the whole, he was against the Bill.

Then Mr. *Norris* rose up. He said, There were several Instances, where that House had taken Notice of Offences of a less Nature, and for less Reason, than this which was before them. That there was one particularly, that had not been mentioned before the 3d of *Richard* the II^d, of an Agent that came from *Genoa*, and was, by Misfortune, kill'd upon a Quarrel in the Streets. The Person who kill'd him, was Try'd, and it was brought in *se defendendo*. But the Person kill'd, being a publick Minister, the Nation thought fit to take more Notice of it; and he who kill'd him, was afterwards Attainted by Parliament.— That if the House was circumscribed by the Rules in *Westminster-Hall*, to what Purpose did they sit there? But if they were invested with a discretionary Power, to do whatever they apprehended to be for the Good of the Kingdom, now there was a fit Occasion to exert that Authority. That indeed, this Power was like Thunder and Vengeance in the Hands of Providence; and was not to be us'd, but upon extraordinary Occasions, and then it ought not to fail: For Men would trifle and despise that Power,

A Bill of Attainder against one, for killing a Foreign Minister, ten Years after the Fact, and after he had been try'd at Common-Law.

that was not able effectually to exert it self. That as some Gentlemen were afraid of making an ill President; it was for that Reason too, that he was for committing the Bill. For as the Law stood, he was but a bungling Politician, that could not ruin the Government, and yet not come within the Bill of Treason, to be hang'd for it. And therefore, for the keeping Ministers of State in Awe, and that the House might have it in their Power to punish future Offenders as they saw fit, as well as the Prisoner, he was for committing the Bill.—

Then Mr. *Finch* rose up, and said: That the other Day, when the Evidence that was offer'd, was objected too; it was answer'd, that they ought to hear it, though it could not be heard in *Westminster-Hall*, because they sat in the House as Judges; and could distinguish what was legal Evidence, and give every part of it its just Weight: But he observ'd now, that some part of the Evidence, which no Man could say had been given according to the Rules of Law, was insisted upon, and Weight laid upon it. That he would have those Gentlemen consider, who said they were not tied by the Rules of *Westminster-Hall*, Whether those Rules were any other, than were necessary for the executing of Justice? And then, How could they be said to go according to Justice, if they went beside those Rules? And if they should say, the Rules of *Westminster-Hall*, were not such as were necessary for the Proceedings in a Court of Justice, he was afraid, they would shake those Barriers of Liberty and Property, a little more than they apprehended at present. And would they declare them unnecessary, when their Ancestors had thought them so; and their Wisdom had derived them to them; and the Wisdom of the Nation, in Parliament, had establish'd those Rules: And concluded, that he was against the Bill.

Col. *Wharton* said, He was of Opinion, they were not to act by the same Rules, as *Westminster-Hall*. For there, the Jury were sworn, and were to make their Judgment according to Law; and if one Witness swore against the Party try'd for Treason, though he did believe in his Conscience he was

Guilty, he ought not to Convict him. But here, if they rejected this Bill, they did in effect declare Sir *John Fenwick* Not Guilty; though they, in their Consciences, believ'd he was Guilty. That though a Juryman's Judgment was bound up by legal Proof, their belief in this Case, must determine their Judgments; and that every Man was bound in Justice, and Duty to his Country, if he believ'd Sir *John Fenwick* to be Guilty, to be for the Commitment of this Bill. And till he was convinc'd, that was a Rule he ought not to go by, he must continue in that Opinion.

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Mr. *Boyle* said, Gentlemen would be very cautious of using it as an Argument, What the People without Doors, or those they represented, might say of them, when they were to give Judgment on the Life and Death of a Man. And, he thought, the same eagerness that might be justifiable upon Impeachments, would not look so well, now they were Judges upon a Bill of Attainder. And as to what had been urg'd, of extorting a Confession, he took it to be quite out of the Case.—— He said, Though the Law requir'd more than one Witness, yet, if this were, indeed, such an extraordinary Case, as requir'd them to dispense with those Forms, and come to this extraordinary Manner of Proceeding; then, he thought, it might be supported by the Necessity of it. That where the Government was at Stake, and nothing would preserve it, but the breaking through settled Forms; there the Government did, and always would, break through them, whatever Rules were prescrib'd.

The Senate of Venice, execute the Conspirators, after they had promis'd them Pardon.

That in the Conspiracy at *Venice*, above One Hundred Years since, which was set on Foot by the *Spaniards*; the Senate, in order to get a full Discovery, promis'd Pardon to all that were concern'd; And after they had examin'd them, they thought it necessary, for the preservation of the Government, to break the publick Faith, and put them all to Death.—— That as to the Presidents quoted, they would not have much Weight with him, unless he knew the Inducements they had for making those Presidents.—— That indeed, in

Catherine's

Cateline's Conspiracy, when they consulted what to do with *Cethegas*, and the other Conspirators; *Cethegas* being General of an Army, that only waited his Orders, to lay *Rome* in Ashes. There it was resolv'd, to break the *Porcian* Law; and for the Safety of the Senate, put them to Death before the Assembly arose. But this was not their Case: For he did not think, Sir *John Fenwick's* Living or Dying, to be of that Consequence, as this Bill of Attainder. That he could not tell, how he came to be so Considerable, now he was in Custody; for he did not observe, he was much feared or regarded, while he walk'd the Streets.—

That as to the Allegation in the Bill, That he had protracted his Tryal; 'twas natural, and what every body attempts; and no body could wonder at it: However, that could be no sufficient Ground to Attaint him. That as to his being the occasion of withdrawing the Evidence, that was not so much as alledg'd in the Bill; and if it had been alledg'd, and prov'd, Did that require such a Punishment as was design'd by this Bill? What were Gaols for, but to keep People in Custody: And if others had been defective in their Duty, should they pass this Bill to supply their Neglects? A President in an extraordinary Case, was no President to be us'd in a little Case. That the Suggestion in their Bill, was, That Great Persons had been aspers'd, and therefore he should be Attainted upon one Evidence. And this would appear upon Record, to have been their Inducement; and would open a Door, to proceed in the same manner, in all Treasons of this Nature. But unless there were that Necessity, that was pretended, he did not see how they could justify passing this Bill of Attainder, either by the Laws of God or Man. And he was not satisfied there was any such Necessity, and therefore could not give his Vote for passing the Bill.

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Nothing but an absolute Necessity, could justify passing this Bill.

Mr. *Smith* answer'd, Although it had been said, that this was a Matter of no great Consequence, because it concern'd only Sir *John Fenwick's* Life; and he was not thought to be so Considerable, as, by his escape, to bring the Publick in Danger: Yet, he

he had always laid it down as a Principle, that if a Plot were discover'd and not throughly prosecuted, it strengthen'd and grew upon them; and Ten to One if it did not subvert the Government: That no one could think that Sir *William Parkins*, or Sir *John Friend*, and the rest that were discover'd were the only Persons concern'd in this Conspiracy; and he believed there must be much greater Men concern'd in it: That when he saw such a Struggle to get People out of Goal, and send them out of the Way, and all Art us'd that could be; he could not suppose but there was something extraordinary still to be done: And he would not have Men think to secure themselves by bribing of Witnesses. That when it was so notorious what Parties there were for King *James*, and Persons were plotting in every Part of the Kingdom, and an open Invasion threatned them, if this were not a Time to exert an extraordinary Power, he submitted to them.

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Sir *R. Temple* said, it was new Doctrine to him that the Laws that were made by Parliament, were to be no Rule to that House; he thought they were not only made for *Westminster-Hall*, but for all the Subjects of *England*, and especially that they were to be a Rule to them that made them, 'till they thought fit to alter them. ——— That as to the Jurisdiction of Parliament, although it seem'd to pass there for Current, that the Parliament might declare what they would Treason, though it was so by no other Law: That was a very great Mistake, for he heard it in the Debate of my Lord *Clarendon's* Case, and it was very plain that the Statute 25 *Edw. III.* related only to Cases brought from inferiour Courts to Parliament, for it said, *That if any other Case supposed Treason, which is not above Specified, doth happen before any Justices, the Justices shall tarry without going to Judgment of the Treason 'till the Cause be shew'd and declared before the King and his Parliament, Whether it ought to be judged Treason or other Felony?* But this was to be adjudged by the Laws in Being, and the Judgment was to be given in the House of Lords, and not in Parliament, by Bill: Much less could they adjudge that to be Treason in this

The Parli-
ment can only
declare what
is Treason,
when the
Cause comes
before them.
from inferi-
our Courts,
by the 25 *Ed.*
III.
And the
Judgment is
to be given in
the House of
Lords.

this House which was not so by Common Law before. So that he observed, There was no such Power reserv'd to the Parliament, to declare any thing Treason which was not Treason before; as had been intimated.—— That he thought it of the most pernicious Consequence, that they should make a Law in a particular Case, to deprive Sir *John* of all the Privileges that belong'd to a Subject of *England*; and though some Gentlemen had mentioned the great Favour he had receiv'd at that Bar, he was sure, they had allow'd the Council for the Bill such Privileges as never had been seen before; namely, to offer that for Evidence which every body acknowledg'd was not so: And he thought no body would take it as a great Favour to be heard in that manner, especially to Things not in the Bill.—— That if Sir *John* had trifled with the Government, he was sorry he had impos'd upon them, but if it were so, he did not see any thing in it of that Consequence, that they should make such a President as they were going about.

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Sir *Francis Winnington* said, He very much admir'd to hear that Doctrine, that every Man ought to judge according to his private Conscience, for at that time, they were judicially trying a Man for his Life, and then he humbly conceiv'd they ought to proceed *secundum allegata & probata*, and that for any Man to say he was guilty, according to his private Opinion, was not to act by the Authority they sat there; and to tell them of a *Lancashire Plot*, or that they should not be chose again, seem'd Arguments to inflame, but were nothing to the Question.—— That, Whereas it had been said they had One Witness, he did not apprehend they had One good Witness, for *Porter* was but upon his Parole; and he appeal'd to them, Whether ever a Bill of Attainder proceeded against any Man upon a bare Affirmation? That if the Thing look'd probable, they ought to have turn'd it into an Impeachment, and then they had had the Witness upon Oath: And that the antient Method of Bills of Attainder, used to be first by Impeachment of the Person, and then it was turn'd into a Bill of Attainder. That

Bills of Attainder us'd to begin by Impeachment and then the Witnesses were upon Oath.

That it had been insisted on by the Council, and 'twas recited in the Bill, that an Indictment had been found by Two Witnesses, *viz.* *Porter* and *Goodman*, but that could not be accounted Evidence here, for it was natural Justice, and the Practice of all Courts in the World, that where a Man was accused as a Malefactor, he should have the Liberty to cross examine the Party who accus'd him; now in Indictments found by the Grand Jury, the Prisoner was never admitted to put cross Questions, because the Indictment was but in the Nature of an Accusation: And if an Accusation were sufficient to convict a Man, none could be innocent. That if *Goodman's* Paper, that was read, was to be admitted as Evidence, the Consequence of that would be, that if any Minister of State could hereafter get an Examination before a Justice of Peace, or Secretary of State, and then send the Examinant away, a Bill of Attainder might then be clapp'd upon the Back of the Party accus'd; and this should be read as Evidence against him.--- That in this particular Case here was an Indictment, Issue joined, and Notice of Tryal given to the Party; and because One of the Witnesses was gone away, no body knew upon what Account, (though, in their private Opinions, they might believe why, that was not their judicial Knowledge:) And because the Prisoner's Tryal had been deferr'd 'till he was gone, therefore a Bill must be brought in to attaint him; but such Facts as these had never been made the Foundation of a Bill of Attainder before.--- That suppose in a Plot against the Government, Forty were taken up for it, and there were Two Witnesses against Twenty of them, and but One against the rest; Would they have Acts of Attainder against all the rest?--- Some Gentlemen had urg'd that the Government was concern'd, and so it was in every Treason and Felony; but, Must there therefore be a Bill of Attainder to punish them? That a Bill of Attainder was only justifiable where some immediate Danger threatned the Government established; that it was agreed this was an extraordinary Proceeding, but the Question was, Whether Sir *John Fenwick's* Case was so extraordinary? Or, If it were
any

any more than the Case of a common Malefactor who was in a wicked Conspiracy? And he could not apprehend, that if Sir *John* was not hang'd, the Government must fail. Therefore, since there was no urgent Necessity to use this extraordinary Remedy, and because such a Bill might be of dangerous Consequence to Posterity, He was against it.

Sir *Thomas Littleton* said a Gentleman had observ'd, that the *Lancashire Plot* and some other Words he had us'd, were us'd only to inflame; but he had heard him frequently bring his Wife and Children into his Speeches, to no purpose at all.

Sir *Francis Winnington* answer'd, He had a Wife and Children, and that Gentleman had none, and therefore he thought he might make use of that Expression.

Sir *Thomas Seymour* said, It was not the Power of Parliaments, but the right Application of that Power that was to be consider'd; they might indeed judge the Prisoner, but the World would judge them, if they did not use that Power aright. That the Law having directed upon what Terms he must give his Judgement to condemn a Man, and having said that Treason should not be deem'd Treason unless it were prov'd by Two Witnesses, he could never give his Judgment to condemn a Man where there was but One. — That it might fall out by Virtue of the President they were about to make that an innocent Man might suffer, and they who made this President would then, in some sort, be accessory to his Blood; But if Sir *John* were not executed he could see no ill Consequence attend it, for though they were depriv'd of One Evidence, and could not convict him of Treason, he need not go unpunish'd, but might be try'd for a Misdemeanour, and imprison'd for Life; and he thought it much safer to let him languish in that Condition, from which no Inconveniency could arise, than to pass this Act which might be of such dangerous Consequence.

Mr. *Boscomen* said he would fain know, though it had been acknowledged that Bills of Attainder might be, How it was possible they could ever be, if some

Some Lawyers said true that they must be upon Oath, since it was apparent they could give no Oath: That he thought, if they could not have Witnesses upon Oath, they must have such Evidence as the Nature of the Thing would admit. And if they were convinc'd in their Consciences that Sir John was guilty of inviting a *French* Army into *England*, he was astonish'd to think they would not pass the Bill against him: That though it were agreed Sir John Fenwick was a little Man, yet the saving of him might pave the Way for a *French* Army to come over, and make their Entrance easy; and he thought the People of *England* were concerned in the Case as well as their Wives and Children: He said the *French* King had observ'd to his Brother, King *James*, how unlikely it was he should bring in Popery with a Protestant Army: That he was sure the bringing in a *French* Army must be the Destruction of the People of *England* and the Protestant Religion; and would bring them to Wooden Shoes: And that as it was said at the Destruction of *Carthage*, *The Common Wealth was always to be minded*, that he believ'd the Prisoner was *Guilty*; and therefore he was for the Bill.

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Whether it be just in the Parliament to take away a Man's Life on less Evidence than in inferiour Courts.

Mr. Brotherton observ'd, That this Bill was brought in upon a Supposition that there was no other Law to try the Prisoner by; but he said, according to *Coke*, where there was but One Witness in Treason, he ought to be try'd before the Constable and Marshal; and in Murder also, where one *English* Man kills another beyond Sea, he could not be try'd by the Common Law, but must be try'd by the Marshal; as was Sir John Amesly's Case in *Rich. II.* Time, and the Lord Herbert's in *Hen. VI.* and he brought these Instances to show, that though the Common Law should fail, there was no need of a Bill in this Case.

Here Mr. Brotherton was interrupted by the great Noise in the House, upon the Novelty of the Argument; and he did not proceed in it.

Mr. Paget said that he did admit, that the House in their Legislative Capacity, were not bound by the

the Methods of inferiour Courts; but that in the Prosecution and Conviction of Offenders, where the Wisdom of Parliament had prescrib'd the Method, He did think that House could not take away a Person's Life upon less Evidence than inferiour Courts could do; for whereas it was said One Evidence and these Papers were Proof enough here, they might as well alledge that these Papers were Evidence enough even without One Witness: And if they might take up with less Evidence than inferiour Courts, Who could declare how little Evidence might take away a Man's Life? That this being the first Person he had sat in Judgment upon, he hop'd he should be excused, if, upon such Evidence as appeared before them, he could not give his Consent to this Bill.

Sir *William Lowther* said, If there had been Two Witnesses the House had not been troubled with the matter, but this was a Case of a very extraordinary Nature, and requir'd a very extraordinary Proceeding. That several had been convicted upon the Evidence of this Witness whose Testimony they had, and every one of them confess'd, which show'd it was a notorious Truth; and where Circumstances were so notorious they were to amount to a Second Witness, as he had heard in *Westminster-Hall*; and in Cases of Life too, as where one comes out of a Room with a bloody Sword where one is found murder'd, the Law did presume that Man murder'd him, though there was only this Circumstance. He said that the Prisoner had fled for it, which was a further Presumption of his Guilt; and upon the whole it appear'd to him that he was *Guilty*.

Mr. *Harley* said, Although they had an absolute Authority, that Authority ought to be executed by the Rules of Reason and Eternal Justice: And he look' upon it as an inviolable Rule, that no Man could forfeit his Life in such a Case as this without Two Witnesses. That this was such an antient Land-Mark, that he would never draw a Curse upon him and his Posterity by removing it.

That he thought the Argument, drawn from the Danger the Government might be expos'd to, ought

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Persons convicted on presumptive Evidence in inferiour Courts.

ought not to be taken in Gross but examin'd, for the same Argument had been us'd in the Case of an innocent Person; *The Romans will come and take our State and Nation*: But with how much Reason that was urg'd every one knows. That this Gentleman was not in open Rebellion, and though they had not their Hands in his Blood he was their Prisoner, and in the Power of the Law; and he did not see what Danger they could be in from a Man in such Circumstances. That Two sorts of Arguments were us'd, one Party would have it, that this Method would probably make him confess something, another, that he ought to be made an Example: That as his Confession was now urg'd as a Reason for this Bill, the same Reason might lead them to bring in another Bill to make him a good Evidence. — That this Bill had not come before them if some great Men had not been aspers'd; but were they the nearest Relations he had, he would be against the Bill upon their Accounts. — That there were some Presidents that had been made very unanimously, which in bad Times had been turn'd to shed the best Blood in *England*: That the Question was not whether Two Witnesses were the Rule of *Westminster-Hall*, but if it was the Rule of right Reason; and that 'twas a Maxim in our Law, that, *Make what Law they would against the Law of God, 'twas Void*. And this was the Law of God and of right Reason.

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Mr. Chancellor of the Exchequer said, If the Parliament might not proceed without two Witnesses, in the Case of Treason, then there was no Room left for a Bill of Attainder; unless they would take the Business of inferiour Courts upon themselves: That inferiour Courts were to go by the Letter of the Law, and whoever could avoid that might escape Punishment there; but the Legislature was not to be dallied with: And if the Offence were of that Nature that inferiour Courts could not reach it, they might go beyond all Forms to preserve the Government: Was it by the Forms of common Justice below, that they declar'd the Throne vacant, and King *William* lawful King? Was

Was it upon the ordinary Rules of *Westminster-Hall* that his Title depended? No, It depended on that Maxim, that the Parliament of *England* were intrusted with the whole, and might constitute a Government for the Preservation of the whole; upon this Principle he gave his Vote to declare King *William* his rightful and lawful King: And upon the same Principle, he declar'd his Enemies to be Traytors.—— That some Gentlemens Arguments run upon the ill Consequence this might have in another Reign, but though he was for avoiding ill Consequences, in another Reign, as much as he could, his immediate Care should be the preserving the present Constitution: Therefore to preserve that, and the Prerogative of Parliament in all Points; and because he was convinced the Prisoner was *Guilty*, he concurr'd in committing the Bill.

Whether the Parliament acted according to Law, in declaring the Throne vacant on the Abdication? Or, Whether upon that Principle that the Parliament might constitute a new Government, for their Preservation.

Collonel *Granvil* said, He would deal with Sir *John Fenwick* as he would have all Men deal with him; and if it was his own Case, if he was not allow'd a Tryal, or the Benefit of making his Defence, according to the known Laws of the Land, he should think his Blood unjustly spilt, were he never so guilty: That when once they broke through the Laws that were made for the Defence of every Man, though their End might seem to justifie them, because 'twas to come at an ill Man, yet it was to be consider'd, that the best Men were to be come at as easily as the worst; and he was the more cautious of dipping his Hands in Blood, because he observed in the Story of the late Times that there were a set of Men, who, when they had once begun and dipp'd their Hands in the Blood of my Lord *Stafford*, nothing would appease them 'till they had stain'd their Hands in Royal Blood.

That he should always be against what was call'd a Tryal to Day, for he did not think it any; and they were a most unfit Court to determine this matter: That some were accus'd, and it was hard the Person accus'd should be Judge at the same time; and if he had been one of them, he should never have gone about to stop his Evidence by

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cramming a Bill of Attainder down his Throat.— That there were other Gentlemen here that were oblig'd to be Council for the King, and he thought it hard that they too must sit as Judges: That he thought it hard also upon the King, who wou'd rather take all Ways to ingratiate himself with his Subjects, and by this Method was put upon pronouncing the Sentence of Death himself or rejecting the Bill.—— That upon the whole he thought the Bill unjust in itself, and dangerous in its Consequences, and therefore hoped they would not commit it.

Whether the Law of God requires Two Witnesses in Treason, as was asserted.

Sir *Herbert Crofts* said, If it were the Law of God and Nature that no Man should be put to Death without Two Witnesses, he wonder'd all Christian Nations were not govern'd by that Law; and he desir'd the Gentleman who asserted it, wou'd be pleas'd to prove it from Scripture; or he hop'd it would have no Weight: That this Attainder was founded upon the same Reason as the Duke of *Monmouth's*, for he was equally out of the Reach of the common Course of the Law, One Witness being withdrawn; and they had no Way to come at him but their Legislative Power: That 'till he could see somewhat of that Law of God, made out, that had been talk'd of, he must go according to the Law of his Reason, and be for the Bill.

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Sir *Christopher Musgrave* observ'd, That it was agreed by all, that this Power ought not to be exercis'd but upon extraordinary Occasions: That High Treason, 'twas true, was a great Crime, but 'twas to be consider'd what there was in this Case, to make it differ so much from other High Treasons, that they must proceed in this extraordinary manner. Indeed he had aspers'd great Men, he had prevaricated with the Government, and protracted his Tryal, 'till a Witness was withdrawn; but if these Reasons were sufficient to induce them to have Recourse to a Bill of Attainder, then, whenever there should be but One Witness for the future, by Virtue of this President, the Legislature must interpose, and a Bill of Attainder be brought in: But then, To what purpose was the Care and Wisdom of their Ancestors and them.

themselves, who had provided, that where the Crime was so great, and attended with so great Punishment, there should be Two Witnesses. --- That in this President it would also appear by their Journals, that they had caused the Deposition of a Person to be read who was absent, taken before a Justice of Peace, when the Party accus'd had no Opportunity to interrogate him; and that they had heard a Witness, as to what was swore in the Tryal of another Man, and this appear'd to be, to supply the Defect of a Witness *Viva Voce*. Now, it was not because it was not agreeable to the Rules in *Westminster-Hall* that such Testimony was not to be admitted (for there was no express Law against it) but the Rule was founded upon Justice and common Right; that no Evidence should be brought against a Man, that was given in a Cause where he was not a Party when the Oath was made, and he had no Opportunity to cross examine the Witness.

Then the Question was put, That the Bill shou'd be committed; and it pass'd in the Affirmative.

Ays 182.

Noes. 128.

The Committee made an Amendment to the Bill, adding the following Words, *Of which Treason, the said Sir John Fenwick is Guilty*: Which was agreed to by the House.

25 Nov. 1696, The Bill against Sir *John Fenwick* was read a Third Time, whereupon, Mr. *Methwin* spoke to this Effect.

He said, He thought it was every Man's Duty, in a Case of this Importance, to give his Reasons for his Opinion; and that no man ought to be for the Bill, who was not convinc'd Sir *John* was guilty of High Treason: And that the Nation had Reason to prosecute him in this extraordinary manner. Now he said, That which distinguish'd this Case from others, was the Danger the Nation apprehended themselves in from this Conspiracy, and that this Danger was not over; and also, that Sir *John* would have contributed to their Safety by a Discovery, as 'twas generally believ'd; but that all the Use he had made of the Expectations

The Care of the Legislature, in providing there should be Two Witnesses to no purpose, if a Bill of Attainder must be brought in when there is but One.

Depositions taken where the Party is not present to cross examine the Witness, nor any thing that has been sworn at another Tryal, Evidence against a Criminal.

the Nation had from him, had been to procure his Tryal to be put off, and contrive a Paper tending to create new Dangers, and do them all the Prejudice he could; and in the mean time One of the Witnesses had been withdrawn by his Friends.

The same Evidence is requir'd to convict a Man on Impeachments, as in inferiour Courts.

No Two Nations agree in their manner of Proof.

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That he could not think they were bound by the Rules of *Westminster-Hall*, because here they acted in their Legislative Capacity, and were making a new Law for attainting Sir *John Fenwick*, and exempting his particular Case from what the Law required in other Cases; for that it was never to be a Law for any other afterwards: In Impeachments indeed, he acknowledg'd the same Evidence should be requir'd as in inferiour Courts, but that it was not necessary in this Case; and as to the Law of God and Nature, and of Nations requiring Two Witnesses, that was not so; but however a Persons Guilt was made evident he ought to suffer for it: And that no Two Nations agreed in their manner of Proof, and that we differ'd from all other Nations in producing the Witnesses Face to Face, and requiring Two Witnesses in Treason, and that we our selves did not require the same Proof in some Crimes as we did in others, for One Witness was sufficient in Felony, and before the Statute of *Edm. VI.* even in Treason that Evidence was sufficient; which was sufficient to encline the Jury to give their Verdict. —

That if this President had been made in the Case of an innocent Person, or even where the Fact was doubtful by a prevailing Party, it had been an ill President: But, it being made for a Man who was notoriously guilty, and one who deserved this extraordinary Resentment of the Nation, and who had been brought to Justice in an ordinary manner if he had not eluded it and made it impracticable: He thought, if it should appear the Nation would not be put off so, but made an Example of this Man, Posterity would applaud and thank them for it.

Sir *Godfrey Copely* held, That the Parliament were not tied up to the Rules of any Society whatever, but still they were to act according to the eternal Rules of Justice and right Reason, which

which were unalterable; and he thought it not agreeable to these, if the Criminal did not know by whom he was accus'd; and the Accuser was not brought Face to Face. He was, indeed, of Opinion, Sir *John* was Guilty, and that there was clear Proof of it by one Witness; but the Indictment which was found behind his Back, he thought, rather lessen'd, than added to the Evidence. For by the same Rule, they made this to supply part of the Evidence that was wanting now; they might, at another time, make use of something of that Nature, to supply the whole. And as to the Necessity of this Procedure; He could not see any great Hazard the Government could be in, from a Man who had lain Six Months in *Newgate*, and no body come near him; or any Discovery they could expect from such a Man, as was worth their while. That indeed, if he were a Man of Invention and Practice, it might be some Spur to him; and to save himself, possibly, he might frame a Plot, that might make the best Subject tremble. And if, on the contrary, he knew nothing, or was such a Blockhead, he was able to invent nothing; Would they, then think it reasonable, to hang a Man for his Ignorance, or want of Sense? That he did not think Sir *John Fenwick's* Life, worth the Debate of the House; but if this Method of Proceeding, were warranted by Parliament, it would be in vain for a Man to offer at a Defence, though he were never so Innocent.

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Mr. *Foley, the Speaker's Son*, said, There were hardly any Instances, that Innocent Men had lost their Lives, but they had proceeded from Precedents begun upon Guilty Men. And whereas it had been said, That if they did not believe Sir *John Fenwick* Guilty, no other Consideration ought to move them to be for the Bill. The Reason he was against it, was, Because it did not appear to him, upon the Evidence, that Sir *John Fenwick* was Guilty: For that which was not legal Evidence, with him, was no Evidence. And if it had not been thought reasonable to Condemn Men, formerly, upon such Evidence; How came it to be thought necessary to do it now? That if believing

Sir *John Fenwick* were Guilty, were a sufficient Reason to Condemn him without Legal Proof; Of what Consequence might this be, for many Things that he had believ'd, as much as he did this; he had found himself mistaken in? And if this Man should appear to be Innocent, after they had taken away his Life, and ruin'd his Family; Would it be sufficient to say, they had follow'd their own private Opinions? Indeed, where a Jury acted upon a legal Testimony, they had no Reason to suspect they were free from Blame; but, Whether they should be so in this Case, was a Question?

That they should pass this Bill, either, because he would not be an Evidence, or, because there was no Evidence against him; were such Inducements, as were not warranted by any Precedent that had been produc'd. That if Sir *John Fenwick* was to be hang'd by them, because there was but one Witness against him, so might another Man: And if they pass'd that Bill, a Man's Life would be as precarious as his Election. That as to the Danger the Government would be in, if they should suffer him to live; He did not think it was in more Danger from him, than from any other Jacobite in *England*. That he was not for bringing the Blood of Sir *John Fenwick* upon him, or his Posterity: Nor could he consent to the making a Precedent, that a Man should be hang'd without Evidence.

Lord *Cutts* presses the passing of the Bill, from the Danger the Government was in.

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My Lord *Cutts* said, That as the most insignificant Creature did not fall without the Consideration of Heaven, he could not be of the Gentleman's Mind, who did not think the Life of this Gentleman worthy of their Consideration. On the other Hand, he did not see why People should doubt of what they clearly perceiv'd; only, because sometimes they had been mistaken.— That if ever there was an extraordinary Case, this was one: Or, if ever any Government was in Danger, this was, or might be, upon the Resolution of that Day. And though Sir *John Fenwick* was in Custody, there was still a Combination amongst them; and, that 'twas by Rewards and Punishments, all Governments were supported: And if they look'd
upon

upon this as a trifling Matter, they might have Plots every Day. That while he remain'd in Custody, the Party were encourag'd to prosecute their Designs. And, he thought, upon the Matter before them, depended no less than the Fate of *England*, of *Europe*, and of all their Posterity. But concluded, that he dealt with Sir *John Fenwick*, with the same Candour and Honour, as he should always desire to be dealt with himself.

Sir *Godfrey Copley* said, All that he meant by Sir *John Fenwick's* not being worth the Consideration of the House, was, That he thought it not worth their while, to act in their Legislative Capacity upon him.

Sir *Charles Cartwright* said, There was so much Roguery in the World, he thought it difficult to arrive at the Truth. That one *Young*, had lately contriv'd a Plot, so cunningly, against the Bishop of *Rocheſter*, that if a Bill of Attainder had been brought in against the Bishop, before the Contrivance had been discover'd, he did not know what might have been the Consequence. That he did not think the Fact sufficiently prov'd against Sir *John Fenwick*, and therefore could not give his Consent to the Bill.

Young's Plot
against the
Bishop of *Rocheſter*.

Mr. *Manly* said, This Proceeding, considering the Circumstances, was not only uncommon, but unprecedented: And, that though he had never so many Obligations to, or Dependances upon, the Crown; it should not influence his Judgment, in a Matter of Life and Death. That it was not only the Policy of *England*, to require two Witnesses in this Case; but the general Consent of the whole World, grounded upon the Law of God, notwithstanding what had been said to the contrary: And if they would look into *Numbers* and *Deuteronomy*, there were three Texts very express in it. That this was illustrated in the Story of *Susannah*; and upon this, her Safety depended. And the *Jews*, in the Prosecution of our Saviour, were oblig'd to find two Witnesses against him. And that this appearing, to be both the Law of the Land, and the Law of God, must also be the Rule he should govern himself by. That it were bet-

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Two Witnesses requir'd in
Treason, by
the Law of
God, and
the Law of
all Nations.

ter his Majesty should put an end to the Plot, by interposing his Grace and Mercy, at this time; than that the Legislative Power should, in this extraordinary Manner, take off a Person, against whom there was no legal Evidence.—— That no Man pretended to deny, but the Precedent might be dangerous to Posterity. And they who were intrusted with the Lives and Liberties of the People; as they were to do nothing to the detriment of the King, because upon him and his Government, the publick Safety depended: So they should do nothing for the King, that might turn to the Detriment and Hazard of the People. That he was sorry to hear an Honourable Lord say, We were not yet out of Danger; when he was so near the King, and had so great a share in the publick Safety. But sure, there could not be any great Danger, from a Person, they had taken such Care should have no Conversation with any one; and depriv'd of his Estate. He was not of a Size, or his Alliances so Considerable, as to be much dreaded in his best Circumstances; much less, in the Condition he was in: And they should take Care, they did not wound themselves by his Blood. That he was against the Bill, and hop'd it would not pass.

Sir *William Strickland* thought it necessary the Bill should pass, that People might be deterr'd from any such Practices against His Majesty, in hopes of escaping Punishment; if they could elude the Justice of inferiour Courts.

Mr. *Dolben* was of Opinion, That it was not the Intention of the 25 *Ed. III.* that the Treasons there enumerated (*of which this was one*) should be adjudg'd in Parliament, but left to the Decision of inferiour Courts. And he knew but one single Instance of any One, that ever was Attainted by Bill, for any Treason contained under those Species in the 25 *Ed. III.* unless they were in open Rebellion, or had fled for it: And that was the Case of *Ferham*. That he never heard of any Person, who after Issue join'd, in order to his Tryal in another Court, that was taken out of their Hands, debarr'd the Benefit of the Judgment of his Peers,

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Never was any Man, before, taken out of the Hands of the inferiour Courts, after Plea pleaded, and Issue join'd there; and cut off by an Act of Attainder.

of his Challenges, &c. and destroyed, and cut off extrajudicially, by an Act made on purpose, *ex post facto*. That he never met with any Instance like it, except that in my Lord *Strafford*. And in the Act of Reversal, it was taken Notice, That that was done by a turbulent Party. And it was the Opinion of their Predecessors, That such Proceedings as these, were contrary to the fundamental Rules of Justice and Right; which Parliaments, as well as other Courts, ought to be govern'd by.—— That the Reason given for Reversing the Attainder of *Roger Mortimer*, was, because he was Attainted contrary to the good Laws and Customs of the Kingdom: And *Ferham's* was in like manner Revers'd; Sir *Thomas Haxey's* was also revers'd, and declared to be against Law.—— That the Attainders in *Hen. VIII.* were Condemn'd, as against all Law and Justice. And the Stat. of 1 *Ed. VI. c. 12.* That there might be no such Proceedings for the future, reduc'd all Treasons to the antient Standard of 25 *Ed. III.* And Enacted, *That no Man should be Convicted or Condemn'd for Treason, but upon the Testimony of two Witnesses.* That he took this to be a general Law, and that it extended to Bills of Attainder; since those were the principal and most powerful Convictions and Condemnations. And then he desir'd them to consider, If this Bill of Attainder was supported by such Evidence, as that Statute requir'd? That he thought, according to the Lord Chief Justice *Vaughan*, they were bound by the Rules of Law, though not to the Forms of Law. And since every body allow'd they were bound, as to the Nature of the Fact, by the 25 *Ed. III.* and they were to form their Judgment of the Fact, by that Statute. And if the 25 *Ed. III.* was held to be binding to them, so as to prescribe them a Rule to judge of the Fact by; Why were not the Statutes of *Ed. VI.* binding to them, as to the Evidence of that Fact? And though it was granted (which had not been prov'd) that one of the Witnesses was withdrawn by Sir *John Fenwick's* Agents: Did it follow, that therefore Sir *John Fenwick* should be immediately put to Death? No, he held not; but that

Instances of several Attainders revers'd, because they were against Law; which shews, that the Law ought to be the Rule, even in Bills of Attainder.

If they were to be guided by one Statute, as to the Nature of the Fact, Why not by another, as to the Evidence requir'd to prove that Fact.

Page 317. that it would be more reasonable, to make a Law, That the Depositions of that Witness, should have the same Effect, as if he had been here, to give his Evidence *viva voce*. For then, they would not deprive Sir John of his Tryal, and the Benefit of his Challenges; which was the Birthright of every Englishman.

These Bills observ'd to be Fatal to the Promoters of them.

That these Bills of Attainder, were like *Sisyphus's* Stone, and often roll'd back upon them who promoted them; and of my Lord *Cromwel*, who advis'd them in the Time of *Hen. VIII.* it had been observ'd, the Advice prov'd fatal to himself,

That if he should consent to the passing this Bill, on any other Grounds than were agreeable to the Laws of God and Man, he should think himself Guilty of Sir John Fenwick's Death: And he did not think he had any such Grounds, and therefore begg'd leave to be against it.

If it be a good Reason to reverse Attainders, because the Parties had not the Benefit of the Laws: The same Reason held against the Enacting them.

This is the first Bill of Attainder, begun in the House of Commons, except the Duke of *Monmouth's*.

Sir *Edward Seymour* observ'd, That most of the Attainders which had been produc'd, as Presidents for them, had been Revers'd; and that, because the Persons Condemn'd, had not had the due Benefit of the Law. Now, he thought, if that were a good Reason for reversing such Attainders; it was also a good Reason, why they should not proceed by Attainder.—— That this was the first Bill of Attainder, except the Duke of *Monmouth's*, that had begun in the House of Commons; and he thought the Reason to be, because, here, they must hear without Oath, and condemn without an Oath; and that neither They, nor the Party accus'd, could have any Advantage against a Witness who gave a false Testimony; as they might in the other House. And that the Method had been, to pass such Bills in the House of Lords, and transmit them to the Commons, upon which they might judge.—— That whereas it had been denied, that the Law of God requir'd two Witnesses: He found, in the 19th of *Deuteronomy*, that in Case of Idolatry, which was the High Treason of that Time, it is said expressly, *That no Man shall be condemn'd to die by the mouth of one Witness, but by two or three Witnesses he shall suffer.* That he took the Reason, by which this Bill was supported, to be destructive of

of all Society : For if it were once admitted, that People might act according to their private Consciences, and not by the Rules prescrib'd them, no Man could be safe. *Felton*, who kill'd the Duke of *Buckingham*, and *Ravillack*, that kill'd *Hen. IV. of France*, acted by this Principle: And this Argument of Conscience, had acted all the Villainy of the last Age; and gone a great Way, in disturbing the Happiness of this. That if this House were not bound by Rules, neither was the King; but he might turn Twenty Colleges out of Doors, if his Conscience prompted him to it. And if this were the Case, into what a Condition had they brought themselves? That they seem'd fond of being sprinkled with the Blood of *Sir John Fenwick*; but since the Government was not in Danger, he believ'd, the Country would be glad that their Blood might run secure in their Veins, and not be tapt upon every Occasion, to serve a Turn. That if this Bill did not pass, *Sir John Fenwick* might live in Misery all his Time: But if it did, no Man could foresee the Consequence. For if there were Rules to be observ'd in all Governments, and no Government could be without them: If they subverted those Rules, they destroy'd the Government; and therefore he gave his Negative to the Bill.

If Judges may go according to their private Consciences, and are not to be guided by the Laws, no Man can be safe. The greatest Villainies acted on pretence of Conscience.

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Mr. *Chancellor of the Exchequer* answer'd, That they did not go upon the Whimsies of *Felton* or *Ravillack*, but upon the Proofs that had been made there: And though there were not two Witnesses; yet upon what appear'd in Proof, he was convinc'd that *Sir John* was Guilty. That as to the Place in *Deuteronomy*, requiring two Witnesses, it requir'd the same in Murder; and if they were to be govern'd by the *Jewish* Law in one Instance, they ought to be so in the other: And then they ought to bring in a Bill, to repeal the Laws of *England*, as to the Evidence that was admitted here, in Cases of Murder. That if this had been the Eternal Law of God and Man, that there should be two Witnesses, Where was that Eternal Law in *England*, before *Ed. the VIth's* time? and, Why was it otherwise in some Species of Treason, in

Objected, If they were to have two Witnesses in Treason, according to the *Jewish* Law, why not in Murder too. That if it were the eternal Law of God to have two Witnesses, where was that Law before *Ed. VI.* and why was it otherwise in some Species of Treason still?

England,

Admitted,
That in Im-
peachments,
there ought
to be two
Witnesses.

Whether the
Attainder of
a Commoner,
can begin in
the House of
Peers.

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Page 320.

The Bill
brought in,
not because
of any Dan-
ger the Go-
vernment was
in, but to vin-
dicate a Per-
son of Ho-
nour.

England, at this very Day; as in the Case of Coin-
ing? That the manner of Proof, was different in
every Country; and that there was no Country,
in which there was not a Power lodg'd in the Go-
vernment, to be exerted upon extraordinary Oc-
casions, beyond the legal Way of Prosecution.
And that he did not believe there was that Place in
Europe, in which it was strictly necessary, there
should be two Witnesses to take away the Life of
a Man; though it were so, as it is here, in all or-
dinary Cases. He acknowledg'd, that even in Im-
peachments, there ought to be two Witnesses;
but these Proceedings in Parliament, were expressly
exempted from this Rule, by a *proviso* in the Sta-
tute. And, he thought, it would prove much
more fatal, if it was held, that the Parliament
could not proceed in such a Case, than that a guilty
Man should suffer.—— That whereas it was said,
this was the first President of a Bill of Attainder,
began in the House of Commons, except the Duke
of *Monmouth's*; He believ'd, if it were not begun
in this House, it could not be brought in at all:
For there was a Statute, that the Life of a Com-
moner, could not be meddled with by the Lords,
originally.

Mr. *Pelham* said, They did not mean, that the
Mosaick Law was binding at this Day; but as to
the Morality of it, and so far as it was founded on
Reason and Justice. But as this Law, of two Wit-
nesses, had been instituted by God, and confirm'd
by our Saviour and his Apostles; and also, made
part of the Law of *England*, He did not think this
a fit Occasion, for dispensing with so fundamental
a Law.

Mr. *Bromley*, of *Warr*, said, The great Argu-
ment that was us'd, was, That the Security of the
Government, requir'd the passing of that Bill:
And that, he thought to be a good one, if they
would make it appear, that unless they proceeded
that Way, the Government was in Danger. But
he observ'd, It was not that Consideration, but
the Vindication of an Honourable Person's Repu-
tation, which brought that Matter first before
them,

That

That he saw no occasion of exerting a Power, which no body deny'd: That he did not see any Security it would be to the Government; and consequently, there was no Necessity for it, and therefore he was against the Bill. Page 321.

Mr. *Harcourt* said, That to tell them the Government was in Danger, and that the Fate of *England* and *Europe* depended upon this Bill; was, certainly, rather offered to amuse, than to convince them. That the Government was in Danger, from one they had in their Power, and might restrain him of his Liberty for Life: One, whose Estate and Interest were so very Inconsiderable. God forbid, that this should be the Case of the Government; that it could not support itself, without the taking away the Life of such a One, contrary to the Rules of Law! — That against the other Argument, of private Opinion; he should not urge the Case of Enthusiasts and Madmen, but the Case of those who had sat in Judgment. If Opinion was to justify the Condemning of a Man, let them never more call the Verdicts against Mr. *Cornish*, Mr. *Sidney*, and the Lord *Russel*, Murders: For, no doubt, their Juries would say, they were Guilty *in their Opinions*. — That they were making a President, which they could not do, without breaking through all the Fences of the Law: And when it was made, they did not know who might suffer by it. Page 322.

The Danger of the Government, but a pretence.

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Mr. *Comper* said, That from the Nature of the Crime, and the Proof that had been made of it, there was sufficient Ground to pass this Bill. And that they did not Condemn him, because he had protracted his Tryal, but because he had been guilty of High Treason, manifestly prov'd against him. That he had been guilty of the worst Treasons; which would have been prov'd in the ordinary Course of Proceedings, if he had not undertook to atone for his Crime, and serve his Country; and so protracted his Tryal, 'till a Witness was gone. And then, when he thought himself out of the ordinary reach of Justice, he had set the Justice of his Country in Defiance. Although these were not sufficient Grounds why he should die, yet they Page 324.

Though his prevaricating till a Witness was withdrawn, &c. were not a sufficient Reason to put him to Death, it was sufficient to justify their Proceeding in this manner against him.

The Evidence given, legal Evidence in Parliament, tho' not in the Courts below, as appeared by the very Acts they insisted upon, on the other side.

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were sufficient to justify their Proceedings in this manner against him.— And although they had been told, that Presidents had been begun with the punishment of the Guilty; and afterwards, the same Methods taken to punish those who were not so: Was it an Argument there should be no such Thing as Justice, because the same Methods might be made use of for punishing honest Men? --- And as to the Objection, That there was no Legal Evidence, he said, It was a Mistake: For before the 1st of *Ed. VI.* one Witness was a good Evidence in High Treason. And that neither this Act, or the 5 of *Ed. VI.* were intended to extend to the High Court of Parliament. So, that though one Witness, corroborated by Circumstances, and the Confession of the Party, would not be legal Evidence below, yet it was a legal Evidence in Parliament, according to the strict Rules of Law: Because, no Law had made two Witnesses necessary in this Case. That even below, a Jury were not bound to go according to legal Evidence; but they were Judges of the Fact, and were to go by no other Rule, than what was ridicul'd here, *even the Rule of their own Consciences.*

That tho' the antient Way was, to begin a Bill of Attainder in the House of Lords, where the Witnesses had their Oaths, and then it was sent down to the Commons; he thought, this was a better Way: And he had rather give his Consent, upon hearing convincing Evidence, and that the Party had nothing to say for himself; than upon a Bill transmitted from the Lords, and no other Evidence, but that they thought fit to pass it. That though Sir *John Fenwick* was said to be so Inconsiderable, that he could not endanger the Government; it was plain he was to be General, and knew a great many of the Officers; and he was satisfied, he had not made that Attonement to his injur'd Country that he ought to have done: And, he thought, unless the Bill proceeded steadily against him, they would have none of that Discovery.— [At this he was interrupted by some Gentlemen, who made some Noise, and shew'd a Dissatisfaction at this Way of Arguing.] Then he went

went on, and said, He would not have it understood, that they would hang up a Man, because he would not confess: But that he having been guilty of the worst of Treasons, and aggravated his Crime in that manner, he deserv'd to die; unless he would merit his Life, by a Discovery of what he knew. And though he thought they were in a proper Method, and might have a better Issue of the Bill, than his Death; yet if it prov'd otherwise, he would but pay a Debt he ow'd to the Justice of his Country.

Mr. *Paget* said, That notwithstanding what the Learned Member, who spoke last, had advanc'd, *viz.* That though this was not Legal Evidence below, it was Legal Evidence in Parliament: He thought the late act they had pass'd for Regulating Tryals in Cases of Treason, ought to be a Rule to them. And 'twas said in that Act, *That after such a Day, no Person should be brought to Tryal for High Treason, but upon the Evidence of two Witnesses.* And that Act being pass'd but last Sessions, and being so much for the Liberty of the People of *England*, he thought, it would be very hard to repeal that Substantial Part of it, so soon after it was made: And none of the Arguments that had been us'd, could convince him, he ought to give Judgment upon less Evidence, than was provided by that Act.

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Col. *Wharton* answer'd, That the Act for Regulating Tryals in Treason, did not extend to Proceedings in Parliament.

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Mr. *Edward Harley* said, He agreed they were not bound by the Rules in *Westminster-Hall*, but if they look'd into History, they would find the Crown had often trump'd up Plots upon the Subject; and therefore these Acts had provided, there should be two Witnesses in Cases of High Treason. That this was the Reason of those Laws, and upon this, he thought the Liberty of the Subject was founded; and therefore he could not be for this Bill.

The Bill
pass'd by the
Commons.

Then the Question being put, *That this Bill do pass*; it was carried in the Affirmative. Ayes 189. Noes 156. But Sir *John Fenwick* had the Honour of being Beheaded, instead of being Hang'd.

The

Page 328. *The Tryal of Capt. THOMAS VAUGHAN, 6 Nov. 8 W. III. 1696. for High Treason, before Sir CHARLES HEDGES, Judge of the Admiralty; the Lord Chief Justice HOLT, the Lord Chief Baron WARD, Mr. Just. TURTON, and the rest of the Commissioners.*

On the 31st of Oct. the Prisoner was Arraign'd.

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The Indictment for High Treason, 1. In adhering to, and assisting the King's Enemies.
2. In Levying War against his Sovereign.

“ THE Indictment set forth, That whereas,
“ on the 8th Day of July, in the 7th Year
“ of the King, there was open War between our
“ said Lord the King, and Lewis the French King;
“ and the said French King, had set out a small
“ Ship of War, call'd the *Loyal Clencarty*, Mann'd
“ with Fifteen Persons, Subjects of the said French
“ King, and Enemies of our said Lord the King;
“ of which *Thomas Vaughan*, late of *Galloway*, in
“ the Kingdom of *Ireland*, Marriner, a Subject of
“ our said Lord the King, was Commander. He
“ the said *Thomas Vaughan*, as a Rebel against the
“ said King, his supreme Lord, on the said 8th
“ Day of July, in the 7th Year of the King, be-
“ ing a Soldier on board the said Ship, in the Ser-
“ vice of the said Lewis the French King; and be-
“ ing on the High Seas, within the Jurisdiction
“ of the Admiralty of *England*, about Fourteen
“ Leagues from *Deal*, did then, and there, by
“ Force and Arms, traiterously adhere to, and
“ assist the said Enemies of our said Lord the King;
“ and afterwards, in pursuance of his Traiterous
“ Purposes, sail'd a Cruising to several Places with-
“ in the Jurisdiction aforesaid, to take the Ships
“ of our said Lord the King, and his Subjects;
“ against the Duty of his Allegiance, the King's
“ Peace, &c.—— And further, That the said
“ *Thomas Vaughan*, intending to stir up War and
“ Rebellion, and to depose and destroy his said
“ Sovereign Lord the King; did, on the said 8th
“ Day

“ Day of *July*, in the 7th Year of the King, upon
 “ the High Seas, about Fourteen Leagues from
 “ *Deal*, and within the Dominions of the Crown
 “ of *England*, and within the Jurisdiction of the
 “ Admiralty of *England*; Assemble himself, with
 “ other false Rebels and Traytors, to the Jurors
 “ unknown, to the Number of Fifteen Persons,
 “ being arm’d and provided in a Warlike manner;
 “ and sail’d a Cruising with the aforesaid Ship of
 “ War, call’d the *Loyal Clencarty*, to several Ma-
 “ ritine Places; with an intent to take and spoil
 “ the Ships and Goods of our said Lord the King,
 “ and his Subjects, upon the High Seas, within
 “ the Jurisdiction aforesaid; against the Duty of
 “ his Allegiance, &c.

To which Indictment, the said *Thomas Vaughan* pleaded *Not Guilty*; and then the Court gave him Notice to prepare for his Tryal, on *Friday* the 6th of *November* following.

Friday, 6 Nov. 1696. The Court being sat, Mr. *Phipps* mov’d, that two Persons might be brought from the *Marshalsea*, who were Evidence for the Prisoner; and the Lord Chief Justice said, he should have an Order for them.

The Prisoner complain’d his Irons were uneasy, and the Lord Chief Justice order’d them to be taken off.

Mr. *Phipps* said, They had some Objections to the Indictment: But the Lord Chief Justice told him, They should have made their Exceptions before the Prisoner had pleaded; for though they had been indulg’d, in the Cases of *Rookwood*, *Cranburn*, and *Lowick*, it was not the intent of the late Act, to alter the Method of Proceeding; as they had determin’d upon Consideration. That the Prisoner was at liberty, by that Act, to except to the Indictment, before he pleaded indeed; and still, they might move in Arrest of Judgment, if there was any material Exception to it.

Then the Jurors were call’d over, and after several Challenges a Jury was sworn, and charg’d with the Prisoner; after which Mr. *Whitacre* open’d the Indictment. Doctor *Littleton* shew’d the Nature of the Crime, and the aggravating

Six Days Notice of Tryal, after Issue join’d.

The Court order the Prisoner’s Witnesses to be brought from the *Marshalsea*.

The Prisoner’s Irons order’d to be taken off.

Exceptions to the Indictment, must be taken before, Plea pleaded notwithstanding the new Statute says, before the Jury are Sworn.

The Prisoner cannot insist on the Witnesses being examined apart, as his Right, but 'tis generally granted.

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Circumstances it was attended with: And Mr. *Sollicitor General* open'd the Evidence.

The Witnesses being call'd, the Prisoner desir'd they might be kept asunder, out of the hearing of one another, which the Court said they would grant as a Favour, but that he could not insist upon it as his Right.

Richard Crouch was Sworn.

Mr. *Cowper*. Give an Account what you know of the Ship *Coventry* taking of the *Clencarty*.

Richard Crouch depos'd, That being in the *Nore* aboard the *Coventry*, they saw this Two and Twenty Oar'd Barge, call'd the *Loyal Clencarty*, of which the Prisoner was Commander, and that they perceiv'd he had a Design upon Two Pinks, but their coming up prevented it; that they chased him and took him, and he had Twenty Five Men on board, and he confess'd that he was an *Irish* Man, and his Design was to burn the Ships in the *Nore*.

Mr. *Lechmere*. From whence did he come?

Crouch. From *Callis*, in *France*.

Edmund Courtney was call'd, to prove that the Prisoner run away with a Custom-House Boat, into *France*.

Mr. *Phipps*. The carrying away a Custom-House Boat is not mentioned in the Indictment, and by the new Act, *For regulating Tryals in Cases of High Treason*, no Evidence is to be admitted of any Overt-Act, not expressly laid in the Indictment.

Sol. Gen. It does not say an Overt-Act must be express'd where it was not needful before: Indeed there must Overt Acts to prove the compassing and imagining the King's Death, because that cannot otherwise be discover'd; but levying War and adhering to the King's Enemies are Overt-Acts of themselves.

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A general Indictment, for levying War or adhering to the King's Enemies, is not good, unless it be shewn in what manner the Party levy'd War, or adhered in the Indictment.

L. C. J. The Force of the Objection is this; That an Indictment for levying War, or adhering to the King's Enemies is not good, unless it be alledg'd in What manner he levy'd War, or adher'd to the King's Enemies; and if you do express how, and in what manner he adhered to them, no Evidence shall be given of any other kind of Adherence,

herence, but that which is so specified in the Indictment.

L. C. J. *Treby*. I observe the Words [*being thereof attainted by Overt Act*] in the Statute 25 *Edw.* III. do immediately follow this Treason of Adhering: Now, it would be a great Violence to construe them to refer to the first Species of Treason only, and not to this immediately preceding those Words.

Mr. *Comper*. Though an Indictment laid generally for levying War, or adhering to the King's Enemies, without specifying in what manner, might not be good, yet, when there is laid a particular Act of Adhering, &c. We may give, in Evidence, matter to strengthen the direct Proof of that particular Act of Adhering, though that matter be not specially laid in the Indictment; for thought the Prisoner shall not be convicted, unless you prove the Overt-Act specially laid, yet we may produce collateral Evidence to induce firmer Belief of the Overt-Act that is laid, as by shewing in other Instances, how he has made it his Practice, during the War, to aid and assist the King's Enemies. *Then the Act was read.*

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L. C. J. You may give Evidence of an Overt-Act not specified in the Indictment, if it tend to prove one that is in it; but you cannot give Evidence of a distinct Act, which has no Relation to the Overt-Act laid in the Indictment, though it do conduce to prove the same Species of Treason. Your shewing that he committed Depredations on the King's Subjects in another Vessel, will not prove that he did it in the *Loyal Clencarty*.

No Evidence can be given of an Overt-Act not laid in the Indictment, unless it tend to prove an Overt-Act that is laid in it.

Mr. *Phipps*. The Overt-Act laid in the Indictment is, That he cruised in the *Loyal Clencarty*: And the Overt-Act you produce is, His being in another Vessel.

L. C. J. Go on, and shew what he did in the *Clencarty*.

Mr. *Phipps*. Mr. *Crouch*, you said he confess'd he was an *Irish* Man, How came he to say so?

Crouch. I only heard him say so to the Lieutenant, as I went by.

Mr. Phipps. Were there any *French* Men on board the *Clencarty*?

Crouch. No, they were all either *English*, *Scotch*, *Irish* or *Dutch*; no *French* that I know of.

Thomas Noden was Sworn.

He depos'd, That he belong'd to the *Coventry*, and as they were sailing by the *Nore* and the *Gun-fleet*, their Captain spy'd a small Vessel sailing by the *Sands*, and supposing her to be a *French* Privateer he fir'd a Gun at them, but they would not come to; then he mann'd out his Boats, and they came pretty near them, and the Vessel run aground, and their Long-Boat also struck; and they waied, after the Men (who were got out of their Vessel) near half a League, and took them as well as the Vessel: That it was a Twenty Two Oar'd Barge, and call'd the *Loyal Clencarty*, and commanded by Capt. *Vaughan*, and had Twenty Three or Twenty Four Men on board, and that several of them were *French* Men; that there was found in the Vessel a Blunderbuss, Small Arms and a considerable Quantity of Hand Granadoes; and every Man had a Cartridge-Box.

L. C. J. Did they endeavour to take your Ship?

Noden. No; but endeavour'd to get away from us.

Samuel Oldham was Sworn.

He depos'd, That he belong'd also to the *Coventry*, and they saw the *Loyal Clencarty* first at the *Nore* and fir'd a Shot at her, and that she run ashore on the *Goodwin Sands*; and they took her, as the other Witnesses had depos'd: That there were a Dozen Foreigners aboard, but whether they were *Dutch* or *French* he was not certain, because he could not speak *French*.

L. C. J. If they were all *Dutch* Men, and appear in a hostile manner against the King of *England*'s Subjects, they are Enemies, though their State be in League with ours.

Mr. Phipps. But in the Indictment 'tis *subditis Gallicis*.

L. C. J. The *French* King's Commission makes them that they are not deem'd Pyrates, and by Virtue of that they may be term'd his Subjects, with respect to any other State but their own:

Though

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Particular
Subjects may
be deem'd E-
nemies, tho'
their State be
at Peace with
ours.
And may be
term'd Sub-
jects of the
Prince they
serve as to us,
otherwise
they are Py-
rates.

Though they are not *French Men*, yet they are *Gallici subditi*, being under the *French King's* Subjection.

R. Bub was Sworn.

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He depos'd, That the said Capt. *Vaughan*, in the Night, in the said Twenty Two Oar'd Barge, rounded the *Coventry*, two or three times, as she was at an Anchor in the *Nore*, they having taken down their Pennant: That in the Morning the *Coventry* weigh'd, and came up with the Barge and took them, as the rest of the Witnesses had depos'd; and that they made no Resistance: But the Pilot, who was an *English Man*, and promis'd his Freedom if he would Pilot them up the River, confess'd, when he was brought aboard the *Coven-try*, that their Design was to burn the Ships in the Harbour of *Sheerness*, and *Vaughan* acknowledg'd as much himself the next Day; and that he was an *Irish Man*, and came from *Calais*.

Mr. *Crittenden*, the Marshal of *Dover*, was Sworn.

He depos'd, That the Prisoner directed him to enter him in his Book by the Name of *Thomas Vaughan*, an *Irish Man*, but he was then in Drink; and the next Morning, at his Examination before the Justices, he denied it, and said he was of *Martinico*.

Mr. *Bullock* was Sworn; and depos'd to the same Effect.

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Sol. Gen. What did *Vaughan* say his Design was?

Bullock. He said, he bought the Boat of the Duke of *Bulloign*, and the Duke ask'd him what he would do with her; and he said he would fit her up, and go take a Ship upon the *English Coast*.

Crittenden was call'd again and demanded if *Vaughan* acknowledg'd himself Captain of the *Loyal Clencarty*, and directed him to enter him by the Name of *Vaughan*, an *Irishman*; and *Critten-den* answer'd, that he did, and that he enter'd Thirteen of the Crew as *French Men*, by their own Directions.

Mr. *Phipps* said, He thought the Indictment The Prisoner's Defence. was not prov'd, for there it was set forth, That the French King fitted out the *Loyal Clencarty*, and

that Capt. Thomas Vaughan was Commander; and that several French Men, Subjects of the French King, were put on board; but the first Witness said there were no French Men, another, that there was one or two, and a third, that they were Foreigners, but he could not tell of what Nation; nor was there any Proof that the Prisoner was Captain of the *Clencarty*, or any Act of Hostility done by them; and that all they had to support the Indictment, was to prove he had a Design to burn the Ships at *Sheerness*, which would not do neither; for the Words of the Indictment were, *Adprædandum super altum mare*, but *Sheerness* was not *super altum mare*, but *infra Corpus comitatus*; and so not within the Indictment.

Mr. Comper. The Words, *Ships at Sheerness*, do not imply that the Ships lay within the Town of *Sheerness*, but off of *Sheerness*, which is *altum mare*.

Mr. Phipps. Then you must prove he was Captain at this time, for the Indictment says, *ad tunc fuit Capitaneus & miles*.

L. C. J. One Overt-Act of his adhering to the King's Enemies is, that he put himself as a Soldier on board the Ship; besides, the Witnesses have prov'd he acted as Captain.

Mr. Phipps. They ought to prove he was Captain at that time, in that Ship, by the French King's Commission.

Mr. Comper. He own'd himself Captain of the *Loyal Clencarty*.

Dr. Oldish. This Proof seems to be built upon the Sayings of People to those who had no Authority to examine them: But what we chiefly insist on is, that they have fail'd in the Foundation of this Treason, for they have not prov'd the Prisoner a Subject of this Crown; for as to his saying he was an *Irish* Man over Night, when he was drunk, he having affirm'd that he was a *French* Man when brought before the Justices judicially the next Morning, that Proof was rather against them: Besides, We have Witnesses to prove him a Native of *Martinico*.

Robert French was Sworn.

He depos'd, That about Sixteen Years ago, being at *St. Christophers*, upon the *French* Ground, he came acquainted with one *Mr. Vaughan*, who show'd him the Prisoner (who was then a Youth of about Fifteen or Sixteen) and told him he was his Son.

Just. Turton. Have you continued any Acquaintance with *Mr. Vaughan* since? How long did you stay at *St. Christophers*?

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French. I staid but Twenty Four Hours there to take Water, and I never saw him since, 'till I saw him in *London*.

L. C. J. How do you know it was the same Man? There must be a great Alteration in a Man in so many Years, especially, being but Fifteen or Sixteen Years of Age then.

French. I believe in my Conscience this is the Man.

L. C. J. Where do you live your self?

French. I live in *Conaught*, in *Ireland*, and have liv'd there these Nine or Ten Years.

Just. Turton. How long have you been in *England*? How came *Capt. Vaughan* to hear of you?

French. I have not been in *England* above Two Months, but it being my Custom to go and see Prisoners out of Charity, I went to *Newgate*, and met with *Capt. Vaughan* by Chance.

Mr. Comper. Do you not use, out of Charity, to be Evidence for them?

French. No, never before in my Life.

Bar. Powis. When you visit Prisons, Is it not to give Ghostly Advice?

French. Upon a charitable Account my Lord.

Mr. Deherty was Sworn.

He depos'd, That he had known the Prisoner, in *France*, for Five Years past, and he was always reputed a *French* Man there.

Mr. Descine, a *French* Man, a Bailiff's Follower, was Sworn.

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He depos'd, That in the Year 1669, being at *Martinico*, at one *Mr. Williams's* a Factor, he desir'd the Deponent to go with him to a Christening, a Mile and half from *Port-Royal*; for he said

one Mr. *Vaughan*, who had a Plantation there had desir'd him to be God-Father: And that happening to go to *Martinico* again in 1677, he was asking Mr. *Williams*, What was become of that young Man whose Christening they were at? And he shew'd him to him, and it was the same Person who was now Prisoner at the Bar; He was sure it was the same.

Mr. *Phipps*. What was the Gentleman's Name, at the Christening of whose Child you were?

Descine. His Name was *Thomas Vaughan*, and the Child's Name was *Thomas Vaughan*.

Francis Harvey was Sworn.

He depos'd, That in the Year 1693, he was at *Paris*, and he became acquainted with Captain *Vaughan*, who was reputed a *French* Man; and he heard his Aunt, Mrs. *Wootton*, (where the Prisoner then lodg'd) say, that he was born in the *West-Indies*, in *Martinico*; and that he was her Sister's Son, who liv'd in *Martinico*.

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David Creagh was call'd as a Witness for the King

The King's Council call Witnesses to shew the Prisoner was a Native of *Ireland*.

He depos'd, That he had known the Prisoner about Two Years, and he had heard from all Persons, whom he had ever heard speak of him, that he was born at *Galloway*, in *Ireland*; and that the Prisoner had often own'd it in his Company: And that since the Prisoner was in Custody, he wrote a Letter to the Deponent not to appear against him.

Then the Letter was produc'd, and *Creagh* said it was the Prisoner's Hand, as he believ'd, and he had often seen him write.

In this Letter he tells the Deponent, That there was none but him and two more that could prove him a Subject of *England*; and if he had more than his Life he would lay it in his Hand, &c.

The Court understanding there was one Mr. *Rivet* in Court, who could give Evidence for the King in this matter, he was Sworn.

Mr. *Rivet* depos'd, That he had known the Prisoner a great many Years, that they were Children together, and that the Prisoner's Father and Mother, Brothers and Sisters liv'd in *Galloway*, and he remembered the Prisoner, not only a School-

School-Boy, but also an Apprentice, to one Mr. *Coleman*, and he thought Mr. *French* must know as much; the Family of the *French's*, to whom he suppos'd that Witness did belong, living in *Galloway*. And he depos'd further, That the Name of the Prisoner's Father was *John*.

Then *Robert French* was call'd again.

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L. C. J. Did you know *John Vaughan* of *Galloway*?

French. I have heard of him.

Rivet. If the Prisoner be the same Gentleman I mean, his Hair is reddish.

Then his Wig was pull'd off, but his Head being shav'd, the Colour could not be discern'd.

Vaughan. The Hair of my Head and Eye-Brows are not red, but a dark Brown.

Mr. Phipps. We shall prove that there was one *John Vaughan* of *Galloway*, and he had a Son *Thomas*, who died about Ten Years ago; and as for Mr. *Creagh*, We shall shew he deserves no Credit.

Then *Christopher Creagh* was Sworn.

He depos'd, That *David Creagh* was his Brother, and that though he had subsisted him for some time, when the Deponent and his Wife were gone abroad, he robb'd him of several Pieces of Gold; which he afterwards own'd, and the Deponent had them again: That this Brother had been in *Newgate* now Eighteen Months, and the Deponent had subsisted him all along, but he had sent the Deponent several Messages, importing, that if he did not allow him more Money he would swear him into a Plot.

L. C. J. Did your Brother tell you he had your Gold?

Christ. Creagh. No; but I had a Letter about it.

L. C. J. Where is that Letter?

Christ. Creagh. I have it not here.

L. C. J. You must not give Evidence of a Letter, unless the Letter was here: It ought to have been produc'd.

Christopher Heyden, Servant to *Christ. Creagh*, was Sworn.

He depos'd, That his Master sent him several times to pay his Brother, *David Creagh*, Five Shillings

No Evidence ought to be given of the Contents of a Letter, unless the Letter be produc'd.

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Shillings a Week ; and *David* often bid him tell his Brother, that if he would not supply him with more Money he would swear against him : And that the Deponent coming to the Sessions, to hear the Pyrates try'd, this *David Creagh*, being in the Bail-Dock, call'd to him, and told him he was to be Evidence against Capt. *Vaughan* ; and the Deponent replying he did not know him, *David* said, here's the Thing ; It had been better for me if I had been Evidence against him before this, and he was forc'd to be Evidence against him to save himself : And added, that he should tell his Brother, *God damn his Soul to all Eternity, if he did not send him some Supply that Day, he would have him in Newgate ; and he should not come out again 'till he came out upon a Sledge.*

Daniel Bryan was Sworn.

He depos'd, That *David Creagh* had threatned his Brother, that if his Brother would not send him Relief, he would inform against him ; and had heard him say, He had rather others should perish than himself.

Creighton was Sworn.

He depos'd, That he was born in *Galloway*, and he knew one *John Vaughan* there, for he liv'd next Door to him ; and that *John* had a Son *Thomas*, who went into the Country, where he died ; as it was reported in the Town about Ten Years since, that he knew *Thomas* very well, but the Prisoner was not he ; and that he knew no other *Vaughan* at *Galloway* but this Family.

L. C. J. How old was that *Thomas Vaughan*, when you was acquainted with him ?

Creighton. I believe about Fifteen.

Mr. Comper. Was not he like this Man ?

Creighton. He was better set, and not quite so tall as this Man, and full of the Small-Pox ; I remember he was the most quarrelsome Boy of the whole Town.

Sol. Gen. Do you think he did not grow since he was Fifteen ?

Page 343. *Mr. Comper.* What Employment was he in ?

Creighton. I think he went to Mr. *Russel's* School to Write and Read, but I don't remember his being Apprentice to any body. *L. C. J.*

L. C. J. What Trade are you?
Creighton. I am a Shoe-maker, and have liv'd
in London these Ten Years.

John Kine was Sworn.
He depos'd, That Thomas Vaughan, the Son of
John, died of the Small-Pox, about Ten or Ele-
ven Years since, and he was about Ten Years old
when he died; and he was buried in Galloway:
That John Vaughan had four other Sons, viz.
John, Edward, William, and James.

Just. Turton. How well these Witnesses agree,
the other said Thomas died about Fifteen, and was
pitted with the Small-Pox; and this Man says he
died at Ten, and of the Small-Pox.

L. C. J. Where do you live now?
Kine. I have liv'd in the City this Twelve
Years, and I think Thomas died about Eight or
Nine Years before I came hither.

Rivet. John Vaughan had all these Sons he men-
tions, except Edward, whom I don't very well re-
member; but for Thomas, I went to School with
him, and I saw him in the Year 1691, about the
Surrender of Galloway.

Juryman. Is that Man at the Bar the same Tho-
mas Vaughan?

Rivet. I am positive of that.

Vaughan. I am a Subject of the Most Christian
King, and can shew you my Commission, wherein
the King my Master declares me to be a Subject of
France.

Dr. Oldish. The Commission is the same as for
all other Subjects of the French King, wherein he
is look'd upon as a natural born Subject of France;
as he averr'd on his Examination, when he was
before the Judge of the Admiralty.

Then the Examination was produc'd; Mr. Cam-
ley having made Oath that it was taken before Sir
Charles Hedges, and sign'd by the Prisoner; and
it was read in Court.

In this Examination the Prisoner declar'd, The Priso-
ner's Exami-
" That he was born at Martinico, within the Do- nation read.
" minions of the French King, but refused to an-
" swer of what Parents he was born: That he
" had commanded several French Privateers, and
" par-

“ particularly the *Granado* of *St. Malo*, of Thirty Six Guns, in which, about Two Years ago, he took the *Diamond*; and being ask'd whether ever he liv'd in *England* or *Ireland*, he refus'd to answer, &c.

L. C. J. Have you any more to say?

Vaughan. I am in very hard Circumstances: If an *English* Man was in *France*, in the Streights I am here, it would be very hard to prove himself an *English* Man: I hope your Lordship will do me Right.

The Chief Justice sums up the Evidence.

Adhering to the King's Enemies, what shall be construed such.

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Foreigners in the French Service, deem'd Subjects of France, and not Pyrates.

Then the Lord Chief Justice summ'd up the Evidence; wherein he observ'd, “ That for a Subject of *England* to join with the King's Enemies, in pursuit of a Design to burn or take any of the King's or his Subjects Ships, was an Adherence to the King's Enemies, within the Statute; and the commanding a Vessel, on board which were the Subjects of *France*, who were Enemies to the King of *England*, was High Treason; and the particular Fact of Treason for which he was indicted: And further, That the Prisoner having a Commission from the *French* King to be Commander of the said Vessel, the *Loyal Clencarty*, though the Men, who serv'd under him, were not Native *French*, but Foreigners; yet, their subjecting themselves to him who acted by Virtue or Colour of that Commission, makes them to be the *French* King's Subjects, during their Continuance in that Service; otherwise, every Prize they shou'd take would make them Pyrates, which could not be pretended when they acted by a Commission from a Sovereign Prince, who was an Enemy: And if they cruised on our Coast, with a Design to take or destroy any of the King's or his Subjects Ships, they are to be deem'd Enemies; though they were the Subjects of a Prince or State in Amity with the King of *England*: And if the Jury should be of Opinion, that Capt. *Vaughan* himself was born a Subject of the *French* King, he was an Enemy but not a Traytor; but that being taken in such Circumstances and speaking *English*, it was to be
“ presum'd

“presum’d, that he was a Subject of *England*, unless he prov’d the contrary, especially here: He having acknowledg’d himself an *Irishman*, and enter’d himself as such, when he was taken.

And the Lord Chief Justice having repeated the Substance of the Evidence on both Sides, concluded; “That if they were satisfied the Prisoner was not an *English* Subject, but a *French* Man; then he was not Guilty of the High Treason wherewith he was charg’d. But if it appear’d to them, that he was an *Irish* Man, and had a Commission from the *French* King; and cruised upon our Coast, in Company with the King’s Enemies, with a Design to take or destroy any of the King’s, or his Subject’s Ships, then they were to find him Guilty of High Treason.

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Then the Jury went out, and after a short Recess, brought the Prisoner in *Guilty*.

He is **Convi-
cted**.

The Prisoner desir’d he might be us’d like a Christian, and a Gentleman; and sent to a Chamber, and not to a Dungeon: And that his Friends might come to him.

The Chief Justice answer’d, That it was said, he once made an Escape, and therefore the Jaylor must keep him with all Security; but with Humanity.

It being demanded of the Prisoner, What he had to say, why Judgment should not pass against him, to Die, according to Law? He referr’d himself to his Council.

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Mr. *Phipps*, in his Argument, insisted; That the Treason of Adhering to the King’s Enemies, was not well laid in the Indictment. For it did not say, That the Prisoner adher’d to the King’s Enemies, *against the King*; and, possibly, he might join with the King’s Enemies, against *Holland* or *Spain*. And they should have laid it, That he did adhere to the King’s Enemies, *contra Dominum Regem*; for it was the Aiding and Comforting them *against the King*, that made the Treason.

The Prisoner’s Council move in Arrest of Judgment.
1 Obj. That the Indictment did not say he adher’d to the King’s Enemies *against the King*.

The Court answer’d, That the Adhering to the King’s Enemies, against his Allies, was an encouraging them, and enabling them to mischief the King; and therefore was Treason: But that was not necessary

Over-ruled.

necessary to be determined in this Case. For the 25 of *Ed. III.* defines the Treason to be, in Adhering to the King's Enemies; and expresses the Overt-Act to be, a giving them Aid or Comfort. And it was sufficient to alledge the Treason in the Words of the Statute, *Adhering to the King's Enemies*: And then, if the Overt-Act alledg'd, shew'd it to be *against the King*, and in pursuance of his Adherence, it was sufficient.

2 Obj. That no Act of Hostility was alledg'd.

Mr. *Phipps*. That Overt-Act is not well alledg'd. For it is said, only he went a Cruising; whereas, they ought to have alledg'd some Act of Hostility. His Cruising might be for other purposes.

Over-rul'd, and held, that Cruising up-on the Coast, with an arm'd Vessel, was an Hostile Act.

L. C. J. When Men form themselves into a Body, and march Rank and File, with Weapons offensive and defensive; this is levying War with open Force, if the Design be publick. And when a Ship is arm'd with Guns, &c. and appears on the Coast, watching an Opportunity to burn the King's Ships in the Harbour; and One knowing of the Design, goes to them, and Aids and Assists them. Is not this an Adhering to the King's Enemies?

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L. C. J. Treby. I take it to be a reasonable Construction of the Indictment, that he was Adhering to the King's Enemies, *in their Enmity*. And as to the Objection, That it can't be construed an Aiding, unless some Act of Hostility were done: Is not the *French King* Aided and Comforted, when our *English* Subjects Man part of his Fleet? Is not the accepting his Commission, entring his Ships of War, and coming out with an intent to ruin the King's Ships; Are not these Actions of a hostile Nature?

And an actual Levying War.

L. C. J. The going on Board, and putting themselves in a posture to Attack the King's Ships, is an actual Levying of War.

[Of the same Opinion was Mr. Baron Powis.]

3 Obj. That the Tryal ought to have been before the Admiralty.

Mr. *Phipps* objected farther, That the 28th of *Hen. VIII.* was repealed by the 1st and 2d of *Philip and Mary*. And therefore, all Treasons committed on the High Seas, ought now to be tried before the Lord Admiral, &c. But the Court over-ruled

ruled this Objection, and held, That the 28th of Over-ruled.
Hen. VIII. was not repealed.

Dr. *Oldish* objected, That although by the Statute, the Form of Proceedings ought to be according to the Rules of the Common Law; yet, as to the Crimes and Proofs, the Civil Law was still in Force: And then the Party might retract his Confession in Judgment, much more an extrajudicial Saying.

One may retract his Confession by the Civil Law.

L. C. J. That you should have taken Notice of, before the Verdict was given.

Dr. *Oldish*. There ought to be two Witnesses.

Sir *Charles Hedges*. So there are here, to the Confession: But every Particular need not be prov'd, as the Civil Law requires. For the Reason of the Statute, was, to facilitate the Method of making Proofs; which was found difficult by the Course of the Civil Law.

Dr. *Oldish*. The New Statute requires two Witnesses, and so the Rules of the Civil Law are reviv'd.

L. C. J. But one Witness to one Overt-Act, and another Witness to another Overt-Act of the same Treason, are sufficient.

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Dr. *Oldish*. It is another Question if he were a Subject.

L. C. J. That is not an Overt-Act; and one Witness to that, is sufficient, tho' here are more. The Civil Law is not receiv'd in all Countries, further than they find it convenient. It is not obligatory in itself.

Dr. *Oldish*. Yes, in all Places, as to Proof: 'Tis the Law of God and Nations, *ex ore duorum vel trium*, &c. And one Witness is no Witness.

If the Laws of God, and all Nations, require two Witnesses in Case of Life,

Sir *Charles Hedges*. Two Witnesses may be necessary to Convict a Man of any Capital Crime; but then it does not follow, that there must be two Witnesses to prove every particular Fact and Circumstance.

L. C. J. Our Tryals by Juries, are of such Consideration in our Law, that we allow their Determination to be the best, and most advantageous to the Subject; and therefore less Evidence is requir'd, than by the Civil Law.

Dr.

Our Juries
presum'd to
be Witnesses.

Dr. *Oldish*. Because the Jury are the Witnesses in reallity, according to the Laws of *England*, being presum'd to be *ex vicineto*; but when it is upon the high and open Seas, they can be presum'd to be *ex vicineto*; and so must be instructed according to the Rules of the Civil Law, by Witnesses.

Mr. Baron *Powis*. This is not a Tryal by the Civil Law; for that Statute was made to avoid the Niceties of your Law.

Sentence pro-
nounc'd.

Proclamation being made for Silence, Sentence was pronounc'd upon the Prisoner as a Traytor.

Vaughan's
Commission.

After the Tryal, Capt. *Vaughan's* Commission is incerted in the Tryals at large.

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The Tryal of EDWARD Earl of Warwick and Holland, before the House of Peers; for the Murder of Capt. RICHARD COOT, the 28th of March, 10 W. III. 1699.

THE Lords came from their own House in their usual Order, into the Court erected in *Westminster-Hall*, about Eleven a Clock; and after they were seated, and Proclamation made for Silence, the Lord High Steward desir'd their Lordships would please to stand up, and be uncover'd, while His Majesty's Commission was reading.--- And his Grace, and all the Peers, stood uncover'd, while the Commission was read.

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Then the Writ of *Certiorari*, directed to the Commissioners of *Oyer and Terminer*, for the County of *Middlesex*; to remove the Indictment found before them, with the Return thereof, and the Record of the Indictment, were read. After

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which, the Earl of *Warwick* was brought to the Bar by the Deputy Governour of the *Tower*, having the Axe carried before him by the Gentleman Jaylor. Then the Lord High Steward made a Speech; wherein he acquainted the Prisoner, That although 'twas a great Misfortune to be accused of so heinous a Crime; and an addition to it,

Lord *Somers*,
then Lord
Chancellour.

to

to be brought to answer as a Criminal, before such an August Assembly. Yet, it ought to be a Support to his Mind, and was sufficient to keep him from sinking under the Weight of such an Accusation, that he was to be Try'd before so Noble, Discerning, and Equal Judges: So that nothing but his own Guilt, could hurt him. And that their Lordships had already assign'd him Council, if any Matters of Law should arise; tho' he would not have Council in Matters of Fact. *Then the Prisoner was Arraign'd.*

The Indictment set forth, “ That the said *Edward Earl of Warwick and Holland*, (together with *Charles Lord Mohun, Richard French, Roger James*, and *George Dockwra*,) not having the Fear of God before his Eyes, &c. on the 30th Day of *October*, in the 10th Year of the King; in the Parish of *St. Martin's in the Fields*, in the County of *Middlesex*; in and upon one *Richard Coot* (of his Malice aforethought) did make an Assault. And that he, the said *Edward Earl of Warwick and Holland*, with a certain Sword, made of Iron and Steel, of the value of Five Shillings, which he had, and held drawn in his Right Hand; in and upon the left part of the Breast of the said *Richard Coot*, near the Collar Bone, of his Malice aforethought, did strike, stab, and thrust; whereby he gave the said *Richard Coot* one Mortal Wound, of the breadth of half an Inch, and of the depth of five Inches: Of which said Mortal Wound, the aforesaid *Richard Coot*, then, and there, instantly died. And that the aforesaid *Charles Lord Mohun, Richard French, Roger James*, and *George Dockwra*, then, and there, feloniously, voluntarily, and of their Malice aforethought; were present, aiding, abetting, comforting, assisting, and maintaining him, the said Earl of *Warwick and Holland*, to Kill and Murder the said *Richard Coot*, in Manner and Form aforesaid; against the Peace of the said King, &c.

The Indictment for the Murder of Mr. *Rich. Coot*.

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To which Indictment, the Earl of *Warwick* pleaded *Not Guilty*.

Sir T. Trevor,
Att. Gen.

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The Evidence
of Lockett's
Drawer, con-
cerning the
beginning of
the Quarrel
at the Ta-
vern.

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Then Mr. Serjeant *Wright* open'd the Indictment, and Mr. *Attorney General* shew'd the Nature and Course of the Evidence.

Samuel Cawthorne Sworn.

Cawthorne. On *Saturday* the 29th of *Octob.* last, about Eight a Clock at Night, my Lord *Warwick*, my Lord *Mohun*, Capt. *Coot*, Capt. *French*, and Capt. *Dockwra*, came to my Master's, at the *Grey-Hound Tavern* in the *Strand*; about Twelve, Mr. *James* came to them, and they all staid 'till between One and Two the next Morning. I did not perceive any Quarrel, or angry Word among them, 'till after they came down to the Bar. They order'd me to call them Chairs; and first came two, into which went Mr. *French*, and Mr. *Coot*; and my Lord *Mohun* went out to them, and swore there should be no Quarrel that Night; but he would send to the Guards, and secure them. On which, both came into the House; and my Lord *Warwick*, Lord *Mohun*, and Capt. *Coot*, stood on the outside of the Bar, and the other Three, on the other Side.

Att. Gen. Pray tell what pass'd throughout the whole Transaction? What was done after they came in again?

Cawthorne. They bid me (if I could get no Coaches) call six Chairs, which I did, and as I return'd, I heard Swords clash; but when they were drawn, or by whom, I know not; I being then in the Street. When I came up, I thought all had been quieted, for their Swords were putting up; and I hop'd they went away friendly.

Att. Gen. Pray how did they go away? Who went together?

Cawthorne. My Lord *Warwick*, Lord *Mohun*, and Capt. *Coot*, went in the first three Chairs; and my Lord *Mohun* said, Capt. *Coot* should lie with him; and bid the Chairmen go home to *Westminster*.

Earl of *Warwick.* I desire he may be ask'd, Whether he ever knew of any Quarrel between Mr. *Coot* and I? If we did not frequent the House together? And if he can remember any particular Kindnesses that pass'd betwixt us?

Cawthorne.

Cawthorne. I never knew any Difference between them, either then, or at any time before: They came to the House daily; I generally attended them, and know my Lord us'd to pay Mr. Coot's Club, and did so that Night. Page 359.

Earl of Warwick. I desire he may be ask'd, between whom he apprehended the Quarrel to be?

Cawthorne. My Lord *Warwick*, Lord *Mohun*, and Capt. *Coot* were on one Side; and the other Three, on the other Side: But the main Quarrel, I believe, was between Mr. *Coot* and Mr. *French*.

Earl of Warwick. I desire he may tell the Words Capt. *Coot* spoke, after he came out of the Chair? And to whom?

Cawthorne. Mr. *Coot* said, He would laugh when he pleas'd, and frown when he pleas'd, God damn him; but whether spoken to Mr. *French*, or the others, I know not: Neither was any Answer made to it.

Earl of Peterb. I desire to know, What Reason he had to apprehend my Lord *Warwick*? Lord *Mohun*, and Mr. *Coot*, were of a Side.

Cawthorne. My Lord *Mohun*, Lord *Warwick*, and Mr. *Coot*, were on one side of the Bar; and the other Three on the other Side.

Earl of Rochester. My Lord, I desire to know, What was the Occasion of their Swords being drawn on each Side?

Cawthorne. I know not; if there was a Quarrel, 'twas above Stairs.

L. H. S. Give a satisfactory Answer, why you thought Lord *Warwick*, Lord *Mohun*, and Mr. *Coot*, of a Side? Page 360.

Cawthorne. My Lord *Mohun* told him, there should be no Quarrel, but they Three should go home together; and I thought 'em of a Side, because they were together on the outside of the Bar, and went away together.

Att. Gen. What Words did you perceive, that made you apprehend there was a Quarrel; and Three and Three of a Side?

Cawthorne. Mr. *Coot* speaking to the other Three, said, He would laugh and frown when he pleas'd.

Att. Gen. Was that before, or after the Swords were drawn? or, Did they draw on that Occasion?

Camthorne. 'Twas before they drew, whilst I was gone to call the Chairs.

Lord Wharton. I desire he may repeat what he knows, about hindering the Quarrel?

Camthorne. My Lord *Warwick*, and Lord *Mohun* said, they would send for a File of Musqueteers; and my Lord *Mohun* did all he could, and had his Finger hurt, in keeping them from fighting.

Lord Godolphin. I desire he may be ask'd, If he was in the Room all the time, before they came to the Bar; and how long?

Camthorne. I receiv'd the Reckoning just before, and staid not above two or three Minutes.

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Att. Gen. Pray let him be ask'd, Whether it was after they were Three and Three of a Side, that my Lord *Mohun* and Lord *Warwick* said they would send for the Guards?

Camthorne. Both before and after.

Earl Rivers. He says, after those Words, they promis'd to be quiet: Who does he mean by They?

Camthorne. Mr. *James* call'd to me, and said, I need not call the Guards, for the Quarrelling was over. I had forgot to acquaint your Lordships, that after my Lord *Warwick*, Lord *Mohun*, and Mr. *Coot* were gone, Mr. *Dockwra* said to the other two, We don't care a Farthing for them, we will Fight them at any time?

Att. Gen. I desire he may be ask'd, If he testified this before the Coroner; or if he gave the same Evidence, in general, before him?

Camthorne. Yes; All, except those Words of *Dockwra*.

Att. Gen. Did he testify these Words at the Tryal of Mr. *Dockwra*, Mr. *James*, and Mr. *French*?

Camthorne. No, 'Twas out of my Mind; and I had like to have forgot it now.

Thomas Brown Sworn.

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The Chair-
man's Evi-
dence, who
carried them.

Brown. On Sunday the 30th of October last, between One and Two in the Morning, I heard Chairs call'd at *Lockett's*: I went thither with my Chair, and found Four there before I came. Capt. *Coot* came into my Chair, and my Lord *Warwick* got

got into another : But there wanting another Chair, my Lord *Mohun* bid me open the Chair again, and they went into the House, and discours'd at the Bar. Then Mr. *Coot* came again into my Chair, and my Lord *Mohun* and Lord *Warwick* into two others. Mr. *Coot* bid me carry him to *Leicester-Fields* : My Lord *Warwick* said, Pray do not ; come along with us, and let it alone 'till To-Morrow ; but he bid us go on. As we turn'd up *St. Martin's-Lane*, my Lord *Warwick* and Lord *Mohun* bid us stop, which we did ; and while they were talking, three Chairs came by ; and Mr. *Coot* bid us make haste before them, and swore he would run his Sword in one of us, if we did not go faster. When we came to *Green-street* end, we set them down together, at the lower corner of *Leicester-Fields* ; and by that time I had fill'd, and lighted my Pipe, Chair was call'd again. When we came up, they bid us bring the Chair over the Rails, which we did ; and there saw two Gentlemen holding up Mr. *Coot*, and crying out, my dear *Coot* !

Att. Gen. Who were those Gentlemen ?

Brown. I did not know them ; One was in Red, and the other had Gold-Lace : They bid me take Mr. *Coot* into the Chair, and offer'd me any Satisfaction to carry him to a Surgeon. We broke the Chair in trying to place him ; but finding it impossible, call'd the Watch : And my Partner and I were afterwards secur'd, and kept 'till next Night, Eleven a Clock.

M. of Norm. I desire to know, How he is sure my Lord *Warwick* was not one of them two ?

Brown. I know him very well, and am sure he was not ; by the light of my Lanthorn.

Earl of Warwick. I desire he may be ask'd, If I did not bid him stop, and use my utmost Endeavour with Mr. *Coot*, to go Home ?

Brown. My Lord *Warwick* and Lord *Mohun*, discours'd him at the *Cross-Key* Tavern Door, and desir'd him to let it alone ; my Lord *Mohun* saying, he should go Home with him. But Mr. *Coot* bid us go on, and said, they would end it to Night. And they call'd again afterwards, to endeavour to prevent his going.

Att. Gen. I desire he may tell, What that Discourse was in *St. Martin's-Lane*? and, What Business they would put off 'till To-Morrow?

Brown. I could not hear, they whisper'd; neither know I what the Business was.

Lord Jefferys. I desire to know, What the Discourse was at the Bar, in the House?

Brown. I was at the Door, and did not hear it.

William Cripps (the other Chairman who carried *Coot*) Sworn.

Cripps depos'd to the same effect with *Brown*, as to carrying *Mr. Coot*, stopping in *St. Martin's-Lane*, setting him down at *Greenstreet* end; and as to their being call'd again soon after, to the upper end of the Fields: And added, that they saw a great deal of Blood. That the Gentleman went away, and he and his Partner call'd a Chirurgeon; who said he was a dead Man, when he came.

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Att. Gen. I desire he may answer down right, If my Lord *Warwick* was not one that held him up?

Cripps. No; One of them was too big, and the other too little for him.

James Crattle (who carried the Earl of *Warwick*) Sworn.

Crattle depos'd, That he and his Partner took up my Lord *Warwick*, at *Lockett's*, and carried him to the lower end of *Leicester-Fields*. That in a little time, Chairs were call'd again; and going up, my Lord *Warwick* went in, and bid them carry them to the *Bagnio* in *Long-Acre*. That when he came to the Door (his Hand being bloody) he ask'd us for a Handkerchief to bind up his Hand.

Att. Gen. Was there any other Chairs at the *Bagnio*, when you were there?

Crattle. Another set down at the same time; but I know not whose it was, from whence it came, or who was in it; but 'twas a pretty tall Man.

Att. Gen. Did you apprehend any Fighting in the Fields?

Crattle. No; I know nothing of it.

John Gibson (the Earl's other Chairman) Sworn.

Gibson depos'd to the same effect with his Partner *Crattle*; that they carried my Lord *Warwick* from *Lockett's*, to *Leicester-Fields*, and afterwards

to the *Bagnio*: And that he knew not the Person, Page 365.
who was set down by the other Chair.

Robert Applegate (who carried my Lord *Mohun*)
Sworn.

Applegate. Mr. *Coot*, and my Lord *Warwick*, getting into Chairs, my Lord *Mohun* came into our's; and order'd us to carry him towards *Westminster*. And he order'd us to follow the other Chairs, when they turn'd up *St. Martin's-Lane*. My Lord *Mohun* call'd to them to stop; and there I heard my Lord *Mohun*, and Lord *Warwick*, desire Captain *Coot* to defer it; but what it was, I can't tell. And the same time, came by three other Chairs; and Capt. *Coot* would go forward, and the other two follow'd.

Att. Gen. What happen'd afterwards?

Applegate. Chairs being again call'd, we ran; and I saw my Lord *Warwick* within the Rails, who bid me put the Chair over. I said we could not; and we went to the upper Corner of the Fields: And then came Capt. *French* to us, and said, he believ'd he was a dead Man; and bid us carry him, with all speed, to the *Bagnio* in *Long-Acre*; and my Lord *Warwick* follow'd in another Chair. And Capt. *French* was so weak, when he came out of the Chair at the *Bagnio*, that he fell down on his Knees.

Att. Gen. Did you see any Sword Capt. *French* had?

Applegate. He had something in his Hand, but I know not what it was.

Att. Gen. Did he say any thing when he first came into the Chair, at the *Grey-Hound Tavern*?

Applegate. I heard nothing from any of them; only my Lord *Mohun*, when he could not prevail with Mr. *Coot* to go Home, said, in *St. Martin's-Lane*, if they would go, he'd go and see it.

Earl of Warwick. I desire he may be ask'd, If I did not endeavour to have all Things deferr'd 'till the Morrow?

Applegate. I never heard one beg more earnestly than my Lord *Mohun*; but I can't say I heard my Lord *Warwick*.

Lord Jefferys. I desire he may be ask'd, If my Lord *Warwick* shew'd any Inclination not to go?

Applegate. I don't know he said any Thing of going or not going.

Peter Catro (the other Chairman who carried my Lord *Mohun*.)

Catro depos'd to the same effect; That they carried my Lord *Mohun* to *Leicester-Fields*, and that he begg'd they would put it off, and go to *Westminster*: And likewise, that they carried Capt. *French* from the Fields to the *Bagnio*; and said, he saw no Sword that either my Lord *Warwick* or Capt. *French* had.

John Palmer (who carried *French*) Sworn.

Palmer depos'd, That he carried Capt. *French* from the *Grey-Hound* Tavern in the *Strand*, to the upper end of *Leicester-Fields*; and he bid them get before all the other Chairs, which they did in *St. Martin's-Lane*. That he set him down by *Leicester-House*; where other Gentlemen were set down likewise. That Capt. *French* paid them, and as they were coming away, they saw some Gentlemen walking about the middle of the Square. That he afterwards understood, the Gentlemen in the other three Chairs, were my Lord *Warwick*, Lord *Mohun*, and Mr. *Coot*: But heard no Fighting, nor knew of any Quarrel.

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Jackson Sworn.

Jackson depos'd, That he carried Capt. *James* from *Lockett's*, and set him down at the *Standard* Tavern in *Leicester-Fields*; where he paid him, and bid him be gone. That he heard Chairs call'd again, but being late, he went directly Home, and knew no more.

Richard Edwards Sworn.

Edwards depos'd, That he carried a Gentleman from the *Grey-Hound* Tavern; but he neither knew him, nor any of the Company. That as soon as they had set him down by the *Standard* Tavern, they went away; and saw three Chairs stand at the lower end of the Fields.

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Henry Pomfret (a Servant in the *Bagnio*) Sworn.

Pomfret. On Sunday, the 30th of October, between Two and Three in the Morning, my Lord *Warwick*

The People of
the *Bagnio*
give their
Evidence.

Warwick knock'd at my Master's; and being let in, he seem'd much concern'd, and said, Captain *French* (who was with him) was very much Wounded, and he himself had a Wound; and bid me call up my Master, and let no one that should ask for him, know he was there. He had a drawn Sword in his Right Hand, and both Hand and Sword were very bloody; the Sword near all over.

Att. Gen. Pray consider what you swore at the Coroner's Inquest?

Pomfret. There was Blood on the Shell, and on the inside of the Sword; but I can't say 'twas so all along the Blade. Mr. *French* had a drawn Sword too, which he bid me take Notice of; and it was not bloody.

Att. Gen. How came you to be desired, to take Notice of the Swords?

Pomfret. There were three of them; and 'twas said, one was Mr. *Coot's*, and another my Lord *Warwick's*: Which was bloody from the Point, upwards.

Att. Gen. Who brought in that Sword of Mr. *Coot's*?

Pomfret. Capt. *Dockwra*, and Capt. *James*, came about half an Hour after them, and were let in by my Lord *Warwick's* Order: They seem'd glad to see each other, and talk'd some time, but I did not hear of what; and, I believe, Capt. *Dockwra* brought Mr. *Coot's* Sword.

Att. Gen. Do you remember my Lord of *Warwick's* Sword; What was upon that, and upon Mr. *French's*?

Pomfret. My Lord *Warwick's* was a Steel Sword, Water-gilt; and was bloody near from the Point, upwards. And on Mr. *French's*, was Water and Dirt, but no Blood.

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Att. Gen. How long did they stay there?

Pomfret. They all continued about half an Hour: My Lord *Warwick* desir'd Care might be taken of Capt. *French*, because he was his particular Friend; and then they went away. But Mr. *French* staid 'till One a Clock, a Sunday in the Afternoon.

Att. Gen.

Att. Gen. Was there any Discourse about Mr. *Coot*, or of any Quarrel, or how Mr. *French* came by his Wound?

Pomfret. No, I did not hear any Discourse about either.

Att. Gen. Which Hand of my Lord *Warwick's* was wounded?

Pomfret. The Right Hand: And it appeared very bloody.

Att. Gen. In what Condition were Mr. *James* and Mr. *Dockwra's* Swords?

Pomfret. Mr. *James's* was naked, having lost his Scabbard; and had Dirt, but no Blood, on it. I did not see Mr. *Dockwra's*, it being in the Scabbard by his side.

Duke of *Leeds.* I desire he would give an Account of the Length and Breadth of all the Swords.

Pomfret. My Lord *Warwick's* was a pretty broad Sword, Capt. *French's* was not so broad; I did not mind the rest, but think Capt. *James* broke his on the Floor after he came in.

Thomas Goodall (Servant in the *Bagnio*) Sworn.

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Goodall depos'd, That he saw my Lord *Warwick* and Mr. *French*, and afterwards, Mr. *James* and Mr. *Dockwra*, at his Master's House, but knew not when any of them came in or went away; and believ'd 'twas my Lord's Right Hand that was hurt, and that his Sword was bloody on the Hilt and Blade.

Mrs. *A. Goodall* (Wife of *T. Goodall*) was Sworn.

A. Goodall. My Lord *Warwick*, and Mr. *French* came in about Two a Clock, Mr. *French* very much wounded, and my Lord's Hand wrapp'd in a bloody Handkerchief; he had a Sword in his Hand very bloody both Hilt and Blade; my Lord order'd himself to be denied, but when Mr. *James* and Mr. *Dockwra* knock'd, and he knew who they were, I think he open'd the Door himself, my Lord order'd particular Care to be taken of his Friend Mr. *French*, and then they three went away.

Mr.

Mr. Henry Amy, Surgeon, (Master of the Bagnio) Sworn.

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Amy. The 30th of *October* last, about Two in the Morning I was call'd out of my Bed to attend Mr. *French* (who was much wounded) and my Lord *Warwick*, who was hurt in his Hand; and he gave Directions to be denied; they had both Swords, my Lord's was very bloody, and the other a little dirty, but without Blood; my Lord went himself to the Door when Mr. *James* and *Dockwra* knock'd, and order'd them to be let in; after I had dress'd my Lord's Hand, they staid a little while, and my Lord, Mr. *James*, and Mr. *Dockwra* went away: I did not observe they talk'd of any Quarrel, or of any one's being kill'd, or how they came by their Wounds; neither did I ask any Question: I heard them talk something about going into the Country, but know not whither.

The Master of the Bagnio's Evidence

Marquis of *Norm.* I desire he may tell the Size of Mr. *French*'s Sword.

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Amy. 'Twas a middle siz'd Sword, the Blade not broad.

Capt. *Loftus Duckinfield* Sworn.

Duckinfield. The next Morning early after this Accident, came my Lord *Warwick*, Captain *James*, and Captain *Dockwra*, and staid about half an Hour, and then went away in a Hackney-Coach together, to the Ship and Castle in *Cornhill*, and call'd on me; and one of them said, he believ'd Capt. *Coot* was kill'd, that my Lord *Warwick* and Lord *Mohun* were of his side, and Mr. *Dockwra* and Mr. *James* of Mr. *French*'s side, that 'twas done in the dark, and they believ'd Mr. *French* was Mr. *Coot*'s Adversary, and Mr. *James* was my Lord's; my Lord seem'd very much concern'd for the Death of Mr. *Coot*.

Att. Gen. Do you know of any Consult to go into the Country? And, Was it before or after News was brought of Capt. *Coot*'s Death?

Duckinfield. Some such thing was talk'd of, but I know not whether before or after.

Att. Gen. Did you observe my Lord of *Warwick*'s Sword?

Duckin-

Duckinfield. It was a pretty broad hollow Blade, and a hollow open Shell, which was all, except the Point, very bloody; whither it proceeded from his own Wound or not I am ignorant.

The Master of the *Ship* and *Castle* in *Cornhill*
Sworn.

Witness. My Lord *Warwick*, Capt. *James*, Capt. *Dockwra*, and Capt. *Duckinfield* came into my House the 30th of *October* last, and when my Lord came in he seem'd much concern'd, and said he was afraid poor *Coot* was kill'd; he call'd for Pen, Ink and Paper, and had some Discourse with his Steward, who came to him, and then about Six a Clock they all went away.

Mr. *Salmon* Sworn:

The Surgeon's
Evidence who
view'd Capt.
Coot's Body by
the Coroner's
Order.

Mr. *Salmon* depos'd, That about Seven a Clock on *Sunday* Night he was order'd by the Coroner to inspect the Body of Capt. *Coot*, and give the Jury an Account of the Nature of the Wounds. That he found two Wounds, one on the Left Part of the Breast, near the Collar-Bone, running downwards; which was about half an Inch wide, and Five Inches deep: That the other Wound was on the Left side too, under the last Rib, about an Inch wide, and Six Inches deep; and run upwards through the *Diaphragma*: And that he took either of them to be mortal.

Att. Gen. Can you tell whether they were made with one Sword or Two?

Salmon. I cannot say any thing for it or against it.

Earl of Kingston. I desire he may say whether the larger Wound could be given by any other than a broad Sword, or whether he can make a Judgment, if the Wounds were made with several Swords.

Salmon. I can't say, I saw any difference in the Orifices, as to the nature of the Instruments they were given with, or whether they were made by one and the same Sword or no; only the Orifice in the side was bigger than that at the Collar-Bone.

Earl of Warwick. It is very material for me that he should answer, Whether he believ'd that one and the same Sword gave the Wounds.

Salmon.

Salmon. I can only say one Wound went further than the other, and being in a fleshy Part, the further the Sword goes, it makes the Wound the larger.

Lord Audley. How far backwards did the Wound in the side lie?

Salmon. Just under the Two last Ribs. [*And pointed with his Finger.*]

Stephen Turner, Capt. Coot's Man, Sworn,
and a Sword shewn him.

Turner. This was my Master's Sword, I never saw it after he went out, 'till I saw it in the Constable's Hand.

Earl of Tankervill. I desire to know if his Master us'd his Left Hand or his Right.

Turner. I never saw him fence, but believe he was a Right-handed Man.

Earl of Warwick. I desire he may be ask'd if he has not observ'd a particular Friendship between his Master and me.

Turner. Yes my Lord: I never heard of any Unkindness or Quarrel, but they were always very civil to each other; and my Master often lay at my Lord Warwick's Lodgings.

Pomfret call'd again, and two Swords shewn.

Att. Gen. I desire he may acquaint your Lordships what he knows of those Swords.

Pomfret. They were brought into our House, by which of them I cannot tell; and in the Morning Capt. French own'd this to be his, and the other Mr. Coot's, and bid me take Notice his was dirty but not bloody; but there was some Blood on the other.

Mr. White, the Coroner, Sworn.

Mr. White depos'd, That he examin'd the Surgeon whether the Wounds were given by the same or different Weapons, but he then answer'd the same as now; but he did apprehend a great Difference between them, and so did the Deponent, that one of the Wounds was nearer the Left side than the other; to the best of his Remembrance 'twas almost behind him.

The Coroner's Evidence.

L. H. S. My Lord of Warwick, The King's Council have ended their Evidence for the King,
and

The Earl's
Defence.

and now is the proper time for you to enter on your Defence.

Then the Earl of *Warwick* enter'd upon his Defence, and observ'd, That it was an Argument of his Innocence, that he voluntarily surrender'd himself as soon as he understood their Lordships were at Leisure to try him, and thought he might submit it to their Judgment, even on the Evidence that had been offer'd against him, whether there had been any thing of Malice prepense prov'd, or of his being an Actor in the Business: But having more Regard to the Vindication of his Honour from the false Reflections of the Prosecutor, than to the Safety of his Life, he begg'd their Lordships Patience while he gave a full Account of the matter.

He declar'd, That when they were together at *Lockett's*, they were, for some time, very friendly as usual, but Mr. *Coot* afterwards reflecting on Mr. *French*, Mr. *French* call'd the Reckoning, and they left the upper Room, and his Lordship propos'd sending some Wine to his Lodgings and carrying them thither, to prevent a Quarrel; but as they stopp'd at the Bar, Mr. *Coot* (whose unfortunate Humour was sometimes to be quarrelsome) again provoking Mr. *French* they drew, and Mr. *Coot* still insisting on the Quarrel, his Lordship and my Lord *Mohun* propos'd sending for the Guards to prevent it; but they having got Chairs to carry them to *Leicester-fields*, my Lord *Mohun* and he follow'd to prevent Mischief, and, by the Way, extreamly press'd Mr. *Coot* to return and be Friends with Mr. *French*, but he refus'd, that going forward they follow'd; that soon after they were set down Mr. *Coot* and Mr. *French* engag'd, that he went in Defence of Mr. *Coot* and receiv'd a very ill Wound in his Hand, that his Lordship had no prepense Malice, but ventur'd his own Life to save Mr. *Coot's*; and should prove by good Witnesses he had a constant Friendship with him to the time of his Death, and doubted not to be acquitted, to the intire Satisfaction of their Lordships and all the World: And desir'd to observe further, That Mr. *French*, *James*, and *Dockwra* were found guilty of Manlaughter only, and said
it

it appear'd on their Tryal, that Mr. *French* was the Person that kill'd Capt. *Coot*, and he being found guilty but of Manslaughter, his Lordship could not be guilty of Murder.

L. H. S. The Method is to call the Witnesses, and then make Observations.

Then the Prisoner call'd his Witnesses. And, Capt. *Edward Keeting* stood up.

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Lord High Steward observ'd to him, That he ought to consider that he spake in God's Presence, who requir'd the Truth should be testified in all Causes, before Courts of Judicature, and their Lordships expected it as if he were upon Oath.

Capt. *Keeting*. Being at *Lockett's* that Evening this Accident happen'd, my Lord *Warwick* came into the Room where I was, and said he was to meet my Lord *Mohun* and Capt. *Coot* there, and ask'd if I knew where C. *French* and *James* were; I said I din'd with Capt. *Coot*, and a while after Capt. *Coot* came in, and afterwards Capt. *French*; and we drank together about an Hour and half, but I not being well, left them and went home. There was nothing like quarrelling before I went away, and indeed I us'd to see my Lord of *Warwick* and Mr. *Coot* there daily; and never observ'd any thing but the greatest Friendship between them.

The Earl's
Witnesses are
call'd.

Colonel *Blisset* stood up.

Earl of *Warwick*. Did you ever observe any Quarrel between us?

Col. *Blisset*. I have been often in Company with my Lord *Warwick* and Capt. *Coot*, and once the Captain complaining he was to pay Four Hundred Guineas for his Commission and had but Three Hundred, my Lord offer'd him a Hundred Guineas; and another time, when his Taylor arrested him my Lord lent him Five Guineas, and has often paid his Reckonings for him: I know Capt. *Coot* has lain at my Lord's Lodgings, and I always observ'd a particular Kindness and Friendship betwixt them; but never heard of any Quarrel, or the least Unkindness.

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Colo-

Colonel *Stanhope* stood up.

Stanhope. About Eight or Ten Days before this Accident I was twice at my Lord *Warwick's* Lodgings, and both times found Capt. *Coot* had lain there; they profess'd a great Kindness for each other, and I never heard of any Unkindness between them.

Mr. *Disney* was call'd.

Earl of *Warwick.* I desire he may be ask'd if he knows of any Expressions of Kindness and Friendship between me and Capt. *Coot*.

Disney. About the time Capt. *Coot* was to have his Commission in the Guards, my Lord *Warwick* receiv'd a Letter from him, desiring his Lordship to lend him a Hundred Guineas, as he had offer'd; and his Lordship directed his Steward to provide a Hundred Guineas for the Captain while I was there, and I have several times seen my Lord pay the Captain's Reckoning for him, and lend him Money, and observ'd the greatest Friendship between them; and never heard of any Quarrel or Misunderstanding they had.

Colonel *Whiteman* was call'd.

He depos'd, That my Lord *Warwick* and Capt. *Coot* were constant Companions, and din'd together almost every Day for half a Year: That my Lord sent for the Deponent to his private Lodgings after this Accident, and express'd a great deal of Concern for the Death of his dear Friend Mr. *Coot*; and his Lordship told the Deponent, that he intended to keep out of the way 'till the Parliament met, because he desir'd to be try'd by the House; and because he did not love Confinement, his Lordship design'd to go over to *France* 'till the House met: And that the Deponent never knew of any Quarrel or Unkindness between his Lordship and the Captain.

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Edmund Raymund, his Lordship's Steward, was call'd.

He depos'd, That there was a very intimate Friendship between his Lord and Capt. *Coot*, and that his Lordship lent the Captain a Hundred Guineas towards paying for his Commission.

The

The Prisoner then desir'd that Capt. *French* might be examined, apprehending, that after he had been tried, and had his Clergy, he was a good Witness in this Case; but his Lordship finding there would arise a Debate in the House, as to Mr. *French's* giving Evidence, his Lordship wav'd his Testimony.

My Lord *Warwick* desired Mrs. *Amy*, the Mistress of the *Bagnio*, might be call'd, and ask'd her if she remembered what pass'd at her House.---- Mrs. *Amy* answered, That about a Quarter of an Hour after they came into her House, she stood by Capt. *French* while his Wounds were dressing, and she look'd upon my Lord *Warwick's* Sword, and saw that the Hilt and all the Shell was full of Blood, and it ran down to the bottom of the Sword Blade.

Then the Earl of *Warwick* pray'd that his Council might be heard to this Point, viz. *Whether, there being Six Persons, three of a side, (and one is kill'd) and his Lordship being engag'd on the side of the Person kill'd, Whether his Lordship was equally guilty with them on the other side; who had been try'd and found guilty of Manslaughter only.*

The Earl demands, if all Person's engag'd on both sides in a Duel are alike guilty.

My Lord *Godolphin* observ'd, That it had been mov'd by my Lord *Warwick*, that his Council might be heard, as to Mr. *French's* being a Witness: And he thought it might tend much to the clearing of the Fact, if Mr. *French's* Evidence might be heard. And therefore, he desir'd to know, if my Lord *Warwick's* waving *French's* Testimony was purely voluntary, or whether his Lordship did desire his Council should be heard to that Point.

Mr. *French* having had his Clergy, but not burnt in the Hand, it was debated, Whether he was a legal Witness.

My Lord *Warwick* answer'd, He was advis'd that Mr. *French* was a good Witness, and desir'd his Council might be heard to it.

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L. H. S. I must acquaint your Lordships, that since I came hither a Privy Seal has been deliver'd me, in order to pass a Pardon for the burning in the Hand of Mr. *French*, for the Manslaughter he was convicted of at the *Old-Bailey*.

Earl of *Warwick*. I am advis'd he is a good Witness without a Pardon, or without burning in the Hand.

L. H. S. What say you to the matter of Law Mr. Attorney, now the Fact is truly stated?

Mr. Attorney's
Argument,
That Mr.
French was no
legal Witness.

Mr. Attorney averr'd, That Mr. French was no Witness in Law: That he had been convicted for the very Offence my Lord Warwick was indicted, though not in the same Degree this Indictment sets forth. He acknowledg'd that Mr. French was convicted but of Manslaughter, and that he had pray'd the Benefit of his Clergy, and it had been allow'd him; but then the burning in the Hand had been respited, and the Allowance of Clergy, without burning in the Hand, did not discharge the Party of the Offence, so as to set him *Rectus in Curia*; and make him in all respects a Person fit to have the Benefit and Privileges of a *Probus & legalis homo*: And to set this matter in its true Light, he took leave to observe, That this burning in the Hand, was first Enacted by the 4 Hen. VII. and was to shew that the Party had had Clergy allow'd; for if he was not a Person in Orders, he was to have it no more than once by that Act, and before he might have had it several times. That after the Party was allow'd the Benefit of his Clergy, he us'd to be deliver'd over to the Ordinary for his Purgation: But, by the 18 Eliz. it is Enacted, That after the burning in the Hand, the Prisoner shall not be deliver'd to the Ordinary, but he shall be discharg'd; and after burning in the Hand, the Prisoner is deem'd to have made full Satisfaction to the Law, without that sort of Purgation which was before requisite; but 'till he is burnt in the Hand, or has his Pardon, his Credit is not restored: The Conviction remains upon him, which disabled him to be a Witness.

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Mr. Solicitor having spoke to the same Effect, it was demanded of my Lord Warwick's Council, What they had to say to the matter.

Sir Tho. Pow-
is's Argument
in behalf of
the Prisoner,
as to Mr.
French's Testi-
mony.

Sir Thomas Powis, of Council for the Prisoner, answered, That he thought the Authorities in Law were on their side: He acknowledg'd that the 4 Hen. VII. was the first Statute that Enacted the burning in the Hand, and that before that Statute, Clergy was allow'd, ever for Murder, as often as it was demanded: But then, this Privilege

lege was thought fit to be restrain'd, and allow'd to a Man but once, unless he was in holy Orders; and to show that the Party had been allow'd his Clergy, he was directed to be burnt in the Hand, but that this was not design'd as a Punishment for the Offence, but only that the Court might know if he had been allow'd it before, when the Party should pray the Benefit of Clergy. That afterwards the Statute of *Edm. VI.* was made, which exempted Peers from burning in the Hand, and afterwards came the 18 *Eliz.* which dispensed with the Purgation, and allows a Man the Benefit of his Clergy without it: That this Act also empowered the Court, which tryed the Prisoner, not only to burn him in the Hand, according to the 4 *Hen. VII.* but to detain him in Prison for a Year; but that neither the burning in the Hand, (which was a Mark of Infamy) any more than the Imprisonment for a Year was intended as a means of restoring a Man to his Credit: And he insisted upon it, that it was the Allowance of Clergy that set him right in Court, since Purgation was abolished; and that now the Allowance of Clergy gives the same Benefit to the Party, as Purgation would have done before the Act of *Eliz.* or the King's Pardon would do now: And he cited *Co. 4 Rep. Holtcroft's Case*, who being convicted of Manslaughter, prayed the Benefit of his Clergy, and the Judges thought fit to respite their Judgment therein, but his Prayer was enter'd on Record; and afterwards an Appeal being brought against him, it became a Question, whether an Appeal would lie; for by the 3 *Hen. 7.* an Appeal will lie, notwithstanding a Conviction, if the Party have not had his Clergy; and it was adjudged that the Party having pray'd his Clergy, he should have the same Benefit as if the Court had ordered every thing to be executed, which ought to have been done thereupon: From whence he inferred, That it could not be made a Question, Whether a Man should be a Witness who had his Clergy actually allow'd. Then he cited the Case of *Searle and Williams* in my Lord *Hobart*, where the Report says, *That whoever speaks Words of Accusa-*

Peers shall
not be burnt
in the Hand.

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Action lies for charging a Man with a Crime, after he has had his Clergy, or is pardon'd.

The King may pardon the burning even in an Appeal.

The Judges Opinion must be ask'd in the Presence of the Prisoner.

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Serj. Wright's Reply to the Prisoner's Council, as to French's Testimony.

tion, reflecting upon any Man, for yna Offence for which he was indicted and convicted, and had had his Clergy allow'd, an Action lies as if he had been totally acquitted from it: And, 'tis not the burning in the Hand, but the Allowance of the Clergy that sets him right in his Credit, in the Eye of the Law: And, That though the Statute saith, after burning in the Hand he shall be discharg'd. (and there is no burning) that makes nothing; for though it be a Case where the Hand ought to be burnt, yet it is not so essential but a Man may have the Benefit of the Statute though he be not burnt: The King may pardon the burning, even in an Appeal, it is no Part of the Judgment, nor so much as in the nature of a Punishment, but rather a Mark to notify that he may have Clergy but once. He cited also my Lord Hale's Pleas of the Crown who treating of the Consequences of Clergy allow'd, says, It gives the Party a Capacity to purchase Goods, and return the Profit of his Land, and restores him to his Credit; according to the Case in *Hobart*, before-mentioned: And therefore, he hop'd their Lordships would make no Difficulty of hearing this Witness. But if this should be look'd on as a legal Objection, the Witness had a Pardon already pass'd the Privy-Seal; and he hop'd their Lordships would not let the Noble Lord at the Bar suffer, by the not perfecting the Pardon under the Broad Seal.

Marquis of *Hallifax*. I suppose your Lordships will have the Opinion of the Judges upon this Point.

L. H. S. It must be in the Presence of the Prisoner, if you ask the Judges Opinion.

Marquis of *Hallifax*. But as it is usual in these Cases, I desire to hear what the King's Council will say by way of Reply.

Mr. Serj. *Wright*. There must be an actual Burning in the Hand, or a Pardon of that Burning; otherwise it cannot be a Satisfaction in Law; such as will put the Party in the same Condition as if he was acquitted: At common Law, Persons who were convicted of Felony, were not restor'd to their Credit, meerly by allowing the Benefit of the Clergy to them, but they were deliver'd over

over to the Ordinary to be kept in Prison, 'till, in a sort of a Tryal before the Ordinary, they had made their Innocence appear, and purg'd themselves of the Facts charg'd upon them; otherwise, they were to lie perpetually in Prison: It was the clearing themselves of the Guilt, that restor'd such Persons to their Reputation and Credit, not the bare Allowance of Clergy: That as to the Case of *Searle and Williams*, it did not oppose this matter, for there the Person convicted was a Clerk in Holy Orders, and, by Law, exempted from burning; and the most that is said by the Chief Justice *Hobart* in that Case is, That where the Hand ought to be burnt it is not essential, but the Party may have the Benefit of the Statute, (that is) he may be discharg'd without burning by a Pardon from the King; and 'tis true, the King may pardon the whole, and by Consequence any Part; and Chief Justice *Hale*, in his *Pleas of the Crown*, Fol. 240 says, That burning in the Hand is now, since the Statute of 18 *Eliz.* the Consequence upon the Allowance of Clergy, and hath this Effect, *First*, It enables the Judge to deliver the Party. *Second*, It restores him to former Capacities. And *Third*, It restores him to his Credit, and puts him in the same Condition as if he were acquitted: And it was never pretended that any Person could have the full Advantage of the Benefit of Clergy since the Statute 4 *Hen. VII.* 'till he was burnt in the Hand, or that Burning pardon'd. In the Case of *Burroughs and Holcroft*, where the Court did not allow Clergy upon the Party's Prayer, (where he ought to have had it,) and yet the praying of it was held sufficient to bar an Appeal; it was very true, he ought to be in the same State as if Clergy had been allow'd: But this had no Likeness to the present Case, for here, it was not pretended that Mr. *French* ever desir'd to be burnt in the Hand, but that was respited in favour to him, that he might get the King's Pardon for the Burning, which he has not yet obtained; and consequently is not entitled to that Benefit which the Law would give him, if he was

A Clergy-
man shall not
be burnt in
the Hand.

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either pardon'd or burnt in the Hand; and therefore he ought not to be admitted as a Witness.

Then the Judges Opinion were demanded.

The Original
of Clergy.

How it differs
in *England*
from the Ca-
non Law.

How it came
to be extend-
ed to Lay-
men,

What is for-
feited in a
Conviction of
Manſlaughter

Page 384.
What he is
reſtor'd to on
his Purgation
or Pardon,

The manner
of Purgation,

The Reason
of burning in
the Hand,

L. C. J. *Treby*. This Privilege has its Original from a Constitution of the Pope's, exempting the Persons of the Clergy from the secular Jurisdiction: But the Canon Law being never thoroughly receiv'd in *England*, this matter was moulded and alter'd, both by our Canon and Statute Law; for the Canon Law only gives this Privilege to Men in Holy Orders, but our Law in favour of Learning, at the Desire of the *English* Bishops, extended it to Lay Clerks, *i. e.* any Lay-man that could read, and so had a possibility of being a Priest; neither would the Canon Law suffer the Clergy to be try'd before secular Judges, but ours subjected them to that Tryal: And when a Man was convicted of Felony, though by allowing him Clergy; his Life, Lands, and Blood were saved, yet *First*, he forfeited all his Goods and Chattels, (not being restored by Purgation or Pardon.) *Second*, He forfeited his Liberty, his Capacity of purchasing Goods or Lands, and of taking the Profits of his Free-hold Lands; and his Credit was so lost that he could not be either Witness or Juror: But as soon as he had made his Purgation, he was restored to his Liberty, Capacities, and Credit. And to this Purgation, the Oath of the Party convicted, and the Oaths or Verdict of an Inquest of Twelve Clerks was required, Proclamation being first made for all Persons to come in, who could give Evidence as to the Party's Life and Conversation: And upon his Acquittal the Ordinary pronounced him innocent, and absolv'd from Infamy; and he was then discharged from his Imprisonment, Incapacities, and Discredit incident to the Felony.

The Statute of 4 *Hen. VII.* introduces a new Law, *viz.* That every Person convicted of Felony, should be burnt in the Hand, before he was delivered to the Ordinary. And this was partly, that he might taste of Corporal Punishment; but principally, to notify that he had had his Clergy. The Statute Enacting, That no Person who had once had the Benefit of Clergy, should ever be admit-
ted

ted to it again; unless he was in Orders, and produced his Letters of Orders, or a Certificate of them.

Then comes the 18 Eliz. c. 7. and says, *That every Person who shall be admitted and allowed to have the Benefit of Clergy, shall not thereupon be delivered to the Ordinary, as hath been accustomed. But after such Clergy allow'd, and burning in the Hand, according to the Statute, [4 Hen. VII.] shall forthwith be deliver'd out of Prison, &c. Provided, that the Justices (before whom, &c.) may, for the further Correction of such Persons, keep them in Prison for such time as they shall think convenient, not exceeding a Year, &c.*

Convict to be deliver'd on Burning, without Purgation, by 18 Eliz.

But may be Imprison'd for a Year.

Therefore, as the Statute of Hen. IV. appoints, That the Convict shall be burnt, before he be delivered to the Ordinary, in order to purgation; the 18 Eliz. appoints, That on allowance of Clergy, and being burnt, he shall be discharg'd without Purgation. And whereas it is objected, That it may as well be said, he shall not be restored to his Credit, till he have suffer'd Imprisonment, not exceeding a Year; as that he shall not be restor'd, 'till burnt. I answer, A Convict is discharg'd from Imprisonment, and all other Penalties incident to the Conviction, forthwith, upon the burning in the Hand. But if there be a new Commitment made, by Virtue of the proviso, it is a Collateral Thing; and the Party is not then in Prison, by Virtue of his Conviction, but by a fresh Order of the Judges; made upon the Heighnousness of the Circumstances, appearing upon the Evidence. But Burning, as well as allowance of Clergy, is requir'd; to entitle the Party to this Privilege. It is a joint Condition, on which the Act works a Discharge to the Party; and he may as well pretend to the Advantage of it, without performing any part of the Condition, as without performing both. Nor is there any Case in our Books, against this Opinion. Those of *Holcroft*, and *Searle*, and *Williams*, which have been cited; are as the King's Serjeant has open'd them, and make for it. To conclude, This Condition precedent, upon which the restitution of this Person's Credit depends, is not

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Burning, as well as the allowance of Clergy, necessary to restore a Man to his Credit, &c.

not perform'd or discharg'd by the King's Pardon; and therefore he is not a Legal Witness.

Rul'd, That *French* was not a Legal Witness.

The other Judges present, declar'd they were of the same Opinion.

Whereupon, the Lord High Steward demanding of their Lordships, If *French* should be admitted a Witness; their Lordships rul'd, that he should not.

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The Prisoner shall not suppose a Fact, and his Council argue the Law arising upon it, 'till the Lords have settled what the Fact really is.

Then the Lord *Nottingham* propos'd the debating the other Question, before mention'd, by the Lord *Warwick*; viz. *Whether the Lord Warwick, who was on the Side of the Party kill'd, were equally Guilty with those who fought on the other Side?* But the Lord High Steward observ'd, that they were not to take any part of the Fact for granted, 'till they had defeated the Proof among themselves: And if any Matter of Law should arise upon the Facts, when they were settled, then would be a proper time to have it debated. But the Lords being of various Opinions, my Lord High Steward demanded of the Earl of *Warwick*, Whether he insisted on his Council's being heard to the Point he had offer'd; for that their Lordships would adjourn to consider of it, if he did?

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Earl of *Warwick*. I submit it to your Lordships, if my Council can be heard to that Point, *Whether I, being of Mr. Coot's Side, can be guilty of his Death?*

L. H. S. That is a Matter of Fact which is not yet determin'd; and therefore the Question which you suppose to arise upon it, is not yet ripe to be resolv'd. If you have no more Witnesses, you are now to sum up the Evidence *your self*; (not being allow'd Council as to Matter of Fact) and you may make such Observations on it, as you think will be to your Advantage; and so close your Defence.

Earl of *Warwick*. I submit it upon the whole Matter, to your Lordships.

Mr. Solicitor sums up the Evidence for the King.

Then Mr. *Solicitor* beginning to sum up the Evidence for the King, and his Voice being low, the Duke of *Leeds* mov'd he might stand within the Bar, at the Clerk's Table; or that one who had a stronger Voice, might sum it up. But the first be-
ing

ing against the Orders of the House, was not admitted; and the other Council not being prepar'd, after Silence had been several times commanded, Mr. *Sollicitor* went on; and having repeated the Substance of the Evidence, he observ'd.

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That it did not appear upon the Evidence, by whose Hands those Wounds were given Capt. *Coot*; and therefore every Person upon the Place, must remain under the imputation of the same Guilt; as having a Hand in, and contributing to his Death. That the Blood upon my Lord *Warwick's* Sword, the 'great Concern his Lordship was in, and his desiring to be conceal'd at the *Bagnio*; and Mr. *French's* Sword not being bloody, who it was pretended did the Fact, gave great Suspicion who did. And though it was alledg'd, that my Lord *Warwick* had a great Kindness for Capt. *Coot*, it appear'd that his Lordship left him Dead in the Field, and took no Care of him; but took a great deal of Care of Captain *French*, who 'twas pretended fought with *Coot*: Nor was there any Answer given to this, by my Lord *Warwick*. That it was also fit for their Lordships to consider the Nature of the Wounds, and that they were both on the Left Side; and how they came to be given to one that had been prov'd to be a Right-handed Man. And concluded, That these Circumstances might incline their Lordships to believe, that the Lord *Warwick* did the Fact; and if he did, it was certainly Murder.

Then the Lords adjourn'd to their House above; and about two Hours after return'd to their Seats in the Hall. And the Lord High Steward demanded of them severally, beginning with the Lord *Bernard*, the *puisne* Baron, *If Edward Earl of Warwick was Guilty of the Felony and Murder whereof he stood Indicted, or Not Guilty.* To which their Lordships severally, in their Order, answer'd. *Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.* After which, the Lord High Steward said, That their Lordships, being Ninety Three in Number, had all acquitted my Lord *Warwick* of the Murder; but were of Opinion, that he was guilty of Manslaughter. And ask'd,

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The Earl of
Warwick found
Guilty of
Manslaughter.

ask'd, If it was their Lordships Pleasure, that he should be call'd to the Bar, and acquainted with their Lordships Judgment; which being consented too, the Governour of the *Tower* was commanded to bring forth his Prisoner, *Edward* Earl of *Warwick*. And the Earl being brought to the Bar, the Lord High Steward told him, that their Lordships Judgment was, That he was not Guilty of Murder, but Guilty of Manslaughter: And demanded, What he had to say, Why Judgment of Death should not be pronounc'd against him, according to Law?

The Earl de-
mands his
Clergy.

The Earl of *Warwick* desir'd, that the Benefit of his Peerage might be allowed him, according to the Statute of *Ed. VI.*

Receives a
Caution how
he offends
again.

The Lord High Steward said, He must have it by Law; but that his Grace was directed by their Lordships, to acquaint him, that he could not have the Benefit of that Statute twice: And therefore, they hop'd, he would take more than ordinary Care of his Behaviour for the future. And that his Lordship was discharged. *Then the Lords adjourned to their House above.*

*The Tryal of CHARLES Lord MOHUN,
for the Murder of Capt. RICH. COOT,
the 29th of March, 10 W. III. 1699.*

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The Lords came into the Court erected in Westminster-Hall, about One a Clock; in the same Order as they did the Day before, to the Tryal of the Earl of Warwick: And after Proclamation made, my Lord Mohun was brought to the Bar, and Arraigned.——

The Indict-
ment for the
Murder of
Capt. Coot.

“ THE Indictment set forth, That the said
“ Charles Lord Mohun (together with *Ed-*
“ ward Earl of Warwick and Holland, Richard
“ French, Roger James, and George Dockwra, Gent.)
“ not having the Fear of God before his Eyes, &c.
“ the 30th of October, in the 10th Year of the
“ King; in the Parish of St. Martin's in the Fields,
“ in

“ in the County of *Middlesex*, in and upon one
 “ *Richard Coot* (of his Malice aforethought) did
 “ make an Assault; and that the aforesaid Earl of
 “ *Warwick* and *Holland*, with a certain Sword
 “ made of Iron and Steel, of the Value of Five
 “ Shillings, which he had, and held drawn in his
 “ Right Hand; in and upon the Left part of the
 “ Breast of the said *Richard Coot*, near the Collar-
 “ Bone, (of his Malice aforethought) did strike,
 “ stab, and thrust: thereby giving the said *Richard*
 “ *Coot* one Mortal Wound, of the breadth of half
 “ an Inch, and of the depth of five Inches: Of
 “ which said Mortal Wound, the aforesaid *Richard*
 “ *Coot*, then, and there, instantly died. And that
 “ he the said Lord *Mohun*, together with *Richard*
 “ *French*, *Roger James*, and *George Dockwra*, (of
 “ his Malice aforethought) was present; aiding,
 “ abetting, comforting, assisting, and maintain-
 “ ing, the said Earl of *Warwick* and *Holland*, to
 “ Kill and Murder the said *Richard Coot*, in Man-
 “ ner and Form aforesaid. So that the said Earl of
 “ *Warwick*, the said Lord *Mohun*, &c. in Manner
 “ and Form aforesaid, feloniously, wilfully, and
 “ of their Malice aforethought, did Kill and Mur-
 “ der the said *Richard Coot*. Against the King's
 “ Peace, &c.

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To which Indictment he pleaded *Not Guilty*.

Then Mr. *Comper* open'd the Indictment, and Mr. *Attorney* shew'd the Nature and Course of the Evidence.

Samuel Cawthorne (the Drawer at *Locket's*)
Sworn.

Cawthorne depos'd, That between One and Two
 on Sunday Morning, the 30th of *October*, my Lord
Warwick, my Lord *Mohun*, Capt. *Coot*, &c. were
 at his Master's; and he went up and took the Rec-
 koning, and all the Gentlemen came down to the
 Bar. That there being no Coaches to be had, the
 Deponent was sent for Chairs; and two Chairs
 came to the Door, and Capt. *Coot*, and Captain
French went into them; but my Lord *Mohun*, and
 Lord *Warwick*, saying there should be no Quarrel
 that Night, they came all into the House, and
 stood, Three on one Side, and Three on the other
 Side

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 The Evidence
 given by the
 Drawer of the
Greybound Ta-
vern.

Side of the Bar. And whilst the Deponent went to call more Chairs, their Swords were all drawn; and he heard my Lord *Mohun* say, as he return'd, I have cut my Finger by endeavouring to part them; and that if they persisted to quarrel, he would send for a File of Musqueteers to secure them. Afterwards, more Chairs coming, my Lord *Warwick*, Lord *Mohun*, and Capt. *Coot* went into the three first, (my Lord *Mohun* ordering their Chairmen to go to *Westminster*) and Capt. *French*, Captain *James*, and Capt. *Dockwra*, immediately follow'd in three other Chairs.

Att. Gen. Was Mr. *James* there at first?

Cawthorne. No; I was sent for him about Ten at Night: He was almost fuddled when he came in; and his Scabbard being broken, he took and broke his Sword, stamping upon it.

Att. Gen. Can you tell what was the occasion of the Quarrel?

Cawthorne. When they were below at the Bar, some Words passed between them. Capt. *French* said, He would laugh when he pleased, and frown when he pleased. And Mr. *Dockwra* said, They would fight them whenever they pleased. But I did not observe any Quarrel while they were above.

Lord *Mohun*: Did not I endeavour all that I could, to quiet them?

Cawthorne. My Lord did endeavour all he could, to prevent a Quarrel; and having cut his Finger, ask'd for a Napkin to wrap his Hand in: And said, He had got the Wound in endeavouring to part them.

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Thomas Brown (the Chairman who carried Capt. *Coot*) Sworn.

The Chair-
man's Evi-
dence.

Brown depos'd, That about Three quarters past One a Clock, on Sunday Morning, he carried Mr. *Coot* from *Lockett's* to *Leicester-Fields*; and my Lord *Warwick* and *Mohun* follow'd in two other Chairs. That turning up *St. Martin's-Lane*, my Lords *Warwick* and *Mohun*, bid them stop, and desired Mr. *Coot* to turn down to *Westminster*, and put it off till Morning: But Mr. *Coot* said, He would make an end that Night. And that three other

other Chairs then passing by, Mr. Coot ordered them to take up, and follow those Chairs into the Fields; and threatned to stick them, if they did not overtake them. That they set him down at *Greenstreet* end, where my Lords *Mohun* and *Warwick* were set down likewise; and then they all Three walk'd up the pav'd Stones, on the Right Hand Side of the Fields, together.

He further depos'd, That soon after hearing Chairs call'd again, he went towards the upper end of the Square, and was there order'd to lift his Chair over the Rails, which he did; and there, by the light of his Lanthorn, saw Capt. *French*, and Capt. *James* (as he believ'd) holding up Capt. *Coot*, and crying out my dear *Coot*! That they desir'd the Deponent to take him into his Chair; and my Lord *Warwick* promis'd to satisfy him, for any Damage that might happen to his Chair, to the Value of 100 l. That they endeavour'd, but could not get him into the Chair, so left him. And lifting their Chair over again, came to the upper Corner of the Rails; and there took in a Gentleman, and carried him to the *Bagnio* in *Long-Acre*. That he was certain, neither of the Persons who held up Mr. *Coot*, was my Lord *Mohun*; neither knew he which Way he went after he set him down; nor ever saw him since, till he now saw him at the Bar.

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Robert Applegate Sworn.

Applegate depos'd, That he carried my Lord *Mohun*; and two other Chairs carried my Lord *Warwick*, and Mr. *Coot*, from *Lockett's*, in the *Strand*, to *Leicester-Fields*. That at first setting out, my Lord *Mohun* said, they would go all Three to *Westminster*, and lie together that Night; but after that, order'd him to follow the other Chairs. And when they came to *St. Martin's-Lane* end, Capt. *Coot's* Chair turning up there, my Lord *Mohun* call'd to Mr. *Coot*, and very earnestly importuned him not to go to *Leicester-Fields*, but defer the Business, for it could not be done that Night. But Capt. *Coot* said, he would not delay it; and then the Chairs were order'd forward: My Lord *Mohun* saying, If you must go, I'll go with you and see it. That he carried him

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him to the Corner of *Leicester-Square*, and set him down at *Greenstreet* end; my Lord *Warwick*, Lord *Mohun*, and Capt. *Coot*, going together up the Stone Pavement, towards the *Standard Tavern*; and he did not see my Lord *Mohun* afterwards.

He further depos'd, That in a short time Chairs were again call'd, at the upper end of the Square; that he went, and saw my Lord *Warwick*, who would have had him put the Chair over the Rails; but he excus'd it, saying, he could not get it back with one in it; but if they would come without the Rails, he was ready to carry 'em any where. That then Capt. *French* came, and bid the Depo-
nent carry him to *Long-Acre*, which he did; and said, That he saw no other Person, than my Lord *Warwick*, and Capt. *French*, in the Fields: And did not believe, by my Lord *Mohun's* hearty Intercession, that he was any way concern'd in the Quarrel.

Peter Ketto Sworn.

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Ketto depos'd, That on the 30th of *October* last, very early in the Morning, he took my Lord *Mohun* into his Chair, and went in Company with two other Chairs (who had my Lord *Warwick* and Capt. *Coot* in them) 'till they came to *St. Martin's-Lane* end; and there Capt. *Coot's* Chair stopp'd, by order (as he supposed) of my Lord *Mohun*; because he had order'd them to carry him to *Westminster*. That the three Chairs standing a-Breast at the *Cross-Key Tavern* Back-Door, my Lord *Mohun* desired Capt. *Coot* to go to *Westminster*, and put off the Business that Night, for it could not be done. But Mr. *Coot's* Chair going on, my Lord *Mohun* ordered the Deponent to follow; saying, If they would go, he would go see what came of it: So they were all Three set down at *Greenstreet* end, and walk'd up the broad Stones together. And, That in a short time, Chairs being call'd again, he went to the upper end of the Fields; and there, some One bid him lift his Chair within the Rails, which he excusing, was order'd to go to the end of the Rails; and there took in Capt. *French*, and carried him to the *Bagnio* in *Long-Acre*: But that he knew not whither

whither my Lord *Mohun* went, neither did he see him afterwards.

Richard Edwards Sworn.

Edwards depos'd, That Three Gentlemen being gone from the *Greyhound* Tavern in the *Strand*, in Chairs; three Chairs more, of which his was one, took up three others, and carried them to the *Standard* Tavern in *Leicester-Fields*; and there setting them down, he went away, and knew not either of the Gentlemen so carried; but believed, he carried either Capt. *James*, or Mr. *Dockwra*. That he knew not what became of them, nor heard Chairs called afterwards.

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Jackson Sworn.

Jackson depos'd, That he knew not who went in the first three Chairs, but in those two that went with him, were Capt. *Dockwra*, and Capt. *French*; and he carried Capt. *James* from *Lockett's*, to *Leicester-Fields*, and set him down at the *Standard* Tavern Door. That as he was returning Home, he met two or three Gentlemen on the pav'd Stones, but knew not who they were; nor what became of my Lord *Mohun*.

Mr. *William Salmon* Sworn.

Mr. *Salmon* depos'd, That he view'd the Body of Mr. *Coot*, by the Coroner's Command; and perceiv'd one Wound on the left part of the Breast, near the Collar-Bone, half an Inch broad, and about four or five Inches deep: The other just under the short Ribs, on the Left Side, about the breadth of an Inch, and the depth of five or six Inches; and pierced through the *Diaphragma*. That he look'd on either to be Mortal, and knew not if they were made with one Sword or two.

The Surgeon who view'd Capt. *Coot's* Body, his Evidence.

L. H. S. My Lord *Mohun*, The King's Evidence being finish'd, this is the Time for you to call your Witnesses.

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[Then my Lord *Mohun* call'd a Witness.

The Witness depos'd, That several Days after this Accident, he was at my Lord *Mohun's* Lodging, and saw his Finger, which had been laid open; and that my Lord *Mohun* said, He receiv'd that Wound, by endeavouring to part Capt. *French*, and Capt. *Coot*.

The Lord *Mohun* calls a Witness.

L. H. S.

L. H. S. Hearsay, in Point of Law, is no Evidence: Your Lordship is to make such Observations on the Evidence for the King, as you think fit.

Lord Mohun's
Observations
on the Evi-
dence.

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Then the Lord *Mohun* observ'd, That there had been no Evidence given, to prove him in the Place where the Fact was done. That the Wound in his Finger, testified his Endeavours to prevent the Quarrel; as well as the Chairman's Evidence of his being very urgent to hinder it. That by saying (if they would go, he would go see it) he only meant, he would go 'till he could see or find an Opportunity to prevent it. That otherwise (as their Lordships might perceive by the Witnesses) his Design was to go to *Westminster*. That he went directly out of the Field, and was not capable of being a Second, by Reason the Wound in his Sword Hand, had disabled him from holding a Sword: So submitted it to their Lordships.

Mr. Solicitor's
Observations
for the King.

Mr. *Solicitor General* summ'd up the Evidence for the King, and observ'd; That my Lord *Mohun* continued in that Company after the Reckoning was paid; and that the Hurt in his Finger, shew'd there was a Quarrel, and that he was concerned in it: And he gave his Chairman Directions to follow the other Chairs, though he knew what Business they went about. And when he perswaded them to defer it, 'twas only to let it alone till next Morning; and after said, If they would go, he would go see it; and did go with them up the pav'd Stones. And, that there was only his own Declaration that he was not at the Place; so that according to the Circumstances, in all probability, they went together, and were all concern'd: And if so, my Lord *Mohun* must be equally Guilty with the rest.

Then the Lords adjourn'd to their House, and being return'd to their Places, my Lord High Steward put the Question to their Lordships severally, Whether *Charles Lord Mohun* was Guilty, &c. And they were unanimously of Opinion, that my Lord *Mohun* was *Not Guilty*. And his Lordship being

being brought to the Bar, the Lord High Steward declar'd, That it was their Lordships Judgment, that he was *Not Guilty*: And therefore his Lordship was discharg'd from his Imprisonment, paying his Fees.

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My Lord Mohun is acquitted.

Whereupon my Lord Mohun said, he begg'd leave to express his great Thankfulness and Acknowledgment of their Lordships Honour and Justice to him: And assur'd them, he would make it the Business of his future Life, to avoid every Thing which might bring him under such Circumstances, as should give their Lordships any trouble of this Nature again.

He promises to avoid all Quarrels for the future.

Then the Lord High Steward dissolv'd his Commission, by breaking his Staff, as usual; after which, he left the Chair, and their Lordships adjourn'd to their House above.

The Court dissolv'd.

The Tryal of SPENCER COWPER, Esq; JOHN MARSON, ELLIS STEVENS, and WILLIAM ROGERS, for Murder, at Hertford Assizes; the 16th of July, the 11 W. III. 1699.

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“ THE Indictment sets forth, That the Prisoners not having the Fear of God before
“ their Eyes, &c. the 13th of *March*, in the 11th
“ Year of his present Majesty, at the Parish of St.
“ *John's*, in the Town of *Hertford*, in the County
“ of *Hertford*; in and upon one *Sarah Stout*, Spin-
“ ster; of their Malice aforethought, did make
“ an Assault: And a certain Rope, about the Neck
“ of the said *Sarah Stout*, did put, fix, and bind. And
“ the Neck and Throat of the said *Sarah*, did hold,
“ squeeze, and gripe; and thereby the said *Sarah*
“ *Stout* did choak and strangle: Of which Choak-
“ ing and Strangling, the said *Sarah Stout*, then
“ and there, instantly died. And so the said *Spencer*
“ *Cowper*, &c. the said *Sarah Stout* did Kill and
“ Murder. And the said *Sarah Stout* being so
“ choak'd and strangled, in order to conceal and
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“ hide the said Murder, the said *Spencer Comper*;
 “ &c. did afterwards throw her into a certain
 “ River, call'd the *Priory River*. Against the
 “ King's Peace, &c.

To which Indictment the Prisoners severally
 pleaded *Not Guilty*.

The King's
 Council must
 shew their
 Cause of
 Challenge,
 when the Pan-
 nel is gone
 through, if
 there be a de-
 fault of Ju-
 rors.

Then the Pannel was call'd over, and the Prisoners agreed to join in their Challenges. And the Pannel being gone through, and their being a Default of Jurors of the principal Pannel, Mr. *Cowper* insisted, That the King's Counsel might shew their Cause of Challenge, as to such of the Pannel as they had challeng'd: And Mr. Baron *Hatsel* was of Opinion they ought to shew Cause. But, at length, Mr. *Cowper* waiv'd the Matter, and the following Gentlemen were Sworn; viz.

Evan Lloyd, Esq;
William Watson,
John Prior,
John Harrow,
George Holgate,
John Stracey,

} *Thomas Parrot,*
 } *Samuel Wallingham,*
 } *Francis Cole,*
 } *Richard Crouch,*
 } *John Cock,*
 } *Richard Dickenson.*

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The Jury being charg'd with the Prisoners, Mr. *Jones* open'd the Indictment and the Evidence; after which, the King's Witnesses were call'd. And First,

Sarah Walker was Sworn.

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Sarah Walker's
 Evidence, of
 Mr. *Cowper's*
 being last in
 the Company
 of the De-
 ceas'd.

She depos'd, That on the *Friday* before the last Assizes, Mr. *Cowper's* Wife sent a Letter to Mrs. *Stout*, that she might expect Mr. *Cowper* at the Assize Time; and they provided for him accordingly. That as Mr. *Cowper* came in with the Judges, Mrs. *Stout* ask'd him to alight; but he said, he would go into Town, and show himself, and send his Horse down presently. And she asking him, How long it would be before he came, he reply'd, he could not tell, he would send her Word. But her Mistress thinking he had forgot, sent the Deponent down, to know if he would come: And he came within a Quarter of an Hour after, and Din'd there; and went away again about Four a-Clock. And her Mistress asking if he would lie there,

there, he said, Yes; and accordingly came about Nine a-Clock, and Supp'd there, and wrote a Letter to his Wife. That her Mistress, afterwards, bid her make a Fire in Mr. Cowper's Chamber; and when she told her she had, her Mistress bid her warm his Bed; And as she went up to warm it, the Clock struck Eleven. About a quarter of an Hour after, she heard the Door clap, and she thought Mr. Cowper had gone out to carry his Letter; and when she came down (a quarter of an Hour after) she found they were both gone, and old Mrs. Stout asking for her Daughter: The Deponent told her, she left her with Mr. Cowper. And she never saw her alive after that; neither did Mr. Cowper return to the House again. That they sat up for her all Night; and about Seven a-Clock the next Morning, she saw her Corps in the Water.

Cowper. Pray be very particular, as to the Time I went out at Night.

Walker. It was a Quarter after Eleven by our Clock; but that went half an Hour before the Town Clock.

Cowper. What Account of the Time, did you give to the Coroner's Inquest?

Walker. I said it was Eleven, or a quarter after Eleven; when I heard the Door shut.

Cowper. What Account did you give of the Time, before the Lord Chief Justice Holt?

Walker. That it was Eleven, or a quarter of an Hour after. Page 410.

Cowper. How did you know your Clock went faster than the Town Clock?

Walker. Our Dinner was dress'd at the Cook's; and it was ready at Two by the Town Clock, and half an Hour after by ours.

Cowper. How came you not to enquire after your Mistress all Night?

Walker. My old Mistress would not let me; she said, if I should not find her, it might make an Alarm all over the Town, and there might be no occasion; and I thought my self, she would come to no Harm, since you were with her.

Cowper. Did your Mistress use to stay out all Night?

Walker. No, never.

Cowper. Was your Mistress never Melancholy?

Walker. I don't say but she has been Melancholy; but I imputed it to her Illness: She has been troubled with a pain in her Head, ever since *May* was Twelve Month.

Cowper. Did you never buy any Poison; and by whose Order?

Walker. I have bought Poison twice within this half Year; it was White Mercury: I bought it to poison a Dog, that had done us a great deal of Mischief.

Cowper. Did you never buy any by your Mistresses Order; or of one Mrs. *Crooke*, upon your Oath?

Walker. No, I never did.

Cowper. Did you give the same Account before the Coroner, you do now?

Walker. Yes; As near as I can tell.

Cowper. Who gave the Dog the Poison?

Walker. I saw the other Maid give it him in Milk.

Cowper. Did your Mistress know of it?

Walker. Yes, She did afterwards.

Cowper. How did the Milk look?

Walker. Not discolour'd in the least.

Mr. Jones. Did you ever find your Mistress, in the least, inclin'd to do herself a Mischief?

Walker. No; I never did.

Cowper. Did you give both Parcels of Poison to the Dog? Pray what Hurt did it do him?

Walker. We gave him all, both the first and the last; but he may be alive now, for ought I know.

Mr. Jones. Did Mr. *Cowper* hear your Mistress, when she bid you warm his Bed?

Walker. He sat by her when she spoke it: He was nearer her than I.

Mr. Jones. And he did not contradict it?

Walker. Not in the least.

Mr. Jones. Was it the old Woman, or the young Woman, who gave you the Order?

Walker. The young Woman.

Mr. Jones. Did Mr. Cowper send for his Horse away next Day?

Walker. I cannot say, I was not in the Way.

Mr. Jones. Did he come to your House afterwards, before he went out of Town?

Walker. No, I am sure he did not.

Bar. Hatsel. Did Mr. Cowper use to lodge at your House at the Assizes?

Walker. Not since I came, he did the Assizes before.

James Berry Sworn.

Mr. Jones. Do you remember in what manner Mrs. Stout was found by your Mill? Evidence of Mrs. Stout's being found

Berry. I went out about Six a Clock in the Morning, to shoot a Flush of Water, and saw something floating in the Water. dead in the River the

Mr. Jones. Was her Face under Water or above? next Morning

Berry. No part of her Body or Face was above Water, only some part of her Cloaths.

Mr. Jones. How much was she under Water?

Berry. About Five or Six Inches, and the Water was about Five Foot deep.

Bar. Hatsel. Did she lie upon her Face?

Berry. She lay upon her Side; and when she was taken out her Eyes was open.

Mr. Jones. Was she swell'd with Water?

Berry. I did not perceive her swell'd, but I was amaz'd, and did not much mind.

Mr. Cowper. Did not you observe Weeds or Trumpery under her?

Berry. There were no Weeds thereabouts then.

Mr. Jones. Was there any thing in the Water to prevent her sinking?

Berry. No, I do not know there was; she lay on her Right side, and her Right Arm was driven between the Stakes, which are within a Foot of one another.

Mr. Cowper. Where was her Left Arm?

Berry. Within a small matter upon the Water.

Bar. Hatsel. Did you see her Head and Arm between the Stakes?

Berry. Yes, her Arm by one Stake, and her Head by another.

John Venables Sworn.

Mr. Jones. Did you see Mrs. Stout in the Water?

Venables. Yes, she lay upon her Right side, and this Arm upon the Water, rather above the Water; her Ruffles were above the Water, tho' I saw nothing to hinder her from sinking: I did not see her when she was taken out, but when I saw her afterwards, her Eyes were open.

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Leonard Dell Sworn.

He deposed, That he saw the Body floating in the Water, that he could see her Face and her Cloaths; That her Stays, and the Coat she had next her, were part of them above Water, that she lay upon her Right Side, and her Head and her Arm were between the Stakes, and that neither the Stakes, or any thing there hindered her sinking; he did not perceive her Arms or Neck stick to the Stakes, and the Water was about Five Foot deep.—— That he help'd to take her out, and they carried her into a Meadow just by, and laid her upon the Bank, where she lay about an Hour, and then she was carried in the Miller's House.

Mr. Jones. Was her Face, Neck, or Arms bruised?

Dell. I saw no Bruise at all.

Mr. Comper. How do you know her Right Arm did not touch the Ground?

Dell. We could see her Arm lying in this manner.

Bar. Hatsel. Was there any Water in her Body?

Dell. None that I could see; some small matter of Froth came out of her Mouth and Nostrils, but not more than I could hold in my Hand.

Juryman. Was she laced?

Dell. Her Stays were laced.

Mr. Comper. How was she taken out of the Water?

Dell. I and another Man stood upon the Bridge where she lay, and he laid hold of her and took her out.

Mr. Comper. Did you stay by her all the time she was laid upon the Bank?

Dell. Yes.

John.

John Ulfe Sworn.

Mr. Jones. Did you see Mrs. Stout taken out of the Water?

Ulfe. I help'd to take her out, she lay on one side.

Mr. Jones. Did she hang or stick by any thing?

Ulfe. There was nothing at all to hold her up, she lay between a couple of Stakes; but the Stakes could not hold her up.

Mr. Jones. Did any Water come out of her.

Ulfe. Nothing at all, only a little Froth came out at her Nostrils.

Katherine Dew Sworn.

Mr. Jones. Did you see Mrs. Stout in the River?

Dew. Yes, she lay side way, with her Eyes open and her Teeth clench'd; with Water flowing a little from her Face: Some part of her and her Petticoats were above Water.

Mr. Jones. Did nothing hinder her from sinking?

Dew. Her Right Arm lay against a Stake.

Mr. Jones. Was she swell'd.

Dew. I did not perceive she was swell'd.

Comper. Did you see where her Right Arm was?

Dew. I could not see her Right Arm, the Water flowed over it.

Mr. Comper. Did you see her after this time?

Dew. I saw her taken out, but not afterwards.

Bar. Hatsel. How was she when she was laid on the Ground?

Dew. She purg'd at the Nose, and one of her Eyes, as soon as she was taken out, but I did not stay long.

Mr. Comper. Was she not laced in her Stays?

Dew. She was laced before and behind.

Thomas Dew Sworn.

He deposed, That she lay floating in the Water, but the Water run some small matter over her, that her Right Arm was within the Stake, and the Left Arm without, and she lay upon her Side; and when she was first taken up he observ'd, her Shoes and Stockins were as clean as when they were put on, no Mud or Dirt upon them; that she did not look as if she had sunk to the Bottom, nor did he see any Water come from her, only there

there was a little Froth came out of her Nose; and he did not observe she was swell'd at all.

Edward Blackno Sworn.

He deposed, that he saw the worps floating in the Water, that she lay on her Right Side, with her Arm in this manner; [*shewing the Court*] and he did not perceive any thing that hindered her from sinking: That he saw the Miller's Man lift her up by one of her Arms, but he did not see her taken out.

William Edmonds, and William Page Sworn.

Edmonds deposed, That they were coming up the River in a Barge, and her Head lay against a Stake in the River, and he called to the Miller to draw the Water, but he said he could not, for then she would swim through; and that the Deponent did not see any thing hindered her from sinking.

Page deposed, That she lay floating in the Water, on her Right Side, with her Head between the Stakes.

Mr. Jones. Did her Arms or Cloaths, or any thing stick and hinder her from sinking?

Page. Not that I saw.

Mr. Comper. Did you see her Legs or Knees?

Page. No, I could not; they were not out of the Water.

Anne Ulfe Sworn.

She deposed, That the Corps lay floating on one side in the Water, the Water came over the Face, and the Deponent help'd to pull her out; that one of her Arms got through the Grate, and was about the Post.

Mr. Jones. But did it hang or stick by any thing?

Ulfe. No.

Mr. Jones. Had she Gloves on?

Ulfe. No Sir.

Mr. Jones. How were her Shoes and Stockins.

Ulfe. They were not muddy; her Stockins were roll'd down, she had no Garters on.

Mr. Comper. You say, one Arm lay through the Stakes, Where lay the other?

Ulfe. The other was down in the Water.

William

William How Sworn.

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He deposed, That he saw Mrs. Stout in the Water, and saw her taken out; that she lay floating with one Arm and her Head in the Grate, and some of her Cloaths were above Water, and he did not perceive she hung, or that any thing hindered her from sinking.

John Meager Sworn.

He deposed, He saw Mrs. Stout floating in the Water; her Right Arm in the Grate, and her Left Arm with the Stream.

Mr. Jones. Did she hang or stick by any thing.

Meager. No, neither hang nor stick, she floated.

John Dimsdale, Jun. the Surgeon, was Sworn.

Mr. Cowper desir'd that some eminent Physicians that were come from London, might be call'd into Court, and hear the Evidence the Surgeons gave; Whereupon Dr. Sloan, Dr. Gath, Dr. Morley, Dr. Gilstrop, Dr. Harriot, Dr. Wollaston, Dr. Crell, Mr. William Cowper, Mr. Bartlett, and Mr. Camlin, came into Court.

Dimsdale, the Surgeon's Evidence, who view'd the Body when it was taken out of the Water.

Dimsdale then depos'd, That he was sent for to Mrs. Stout's, and went down with Mr. Cumlin and view'd the Corps, and he found a little Swelling on the side of her Neck, and she was black on both sides, more particularly on the Left side, and between her Breasts, up towards the Collar Bone; and there was a little Mark upon one of her Arms.

Mr. Jones. How were her Ears?

Dimsdale. There was a Settling of Blood on both sides her Neck: There was a blackness on both Ears.

Mr. Cowper. When you return'd to the Coroner's Inquest, What did you certify as your Opinion?

Dimsdale. I certified there was a Settling of Blood, but how it came I could not tell.

Mr. Cowper. Did not you say, it was no more than a common Stagnation, usual in dead Bodies?

Dimsdale. I do not remember a Word of it.

Mr. Cowper. Had she any Circle about her Neck?

Dimsdale. No, upon my Oath.

Sarah

Sarah Kimpson Sworn.

She deposed, That she help'd to strip Mrs. *Stout*, and she had a great Settlement of Blood behind her Ear, more than her Hand would cover; she had a Settlement of Blood under her Collar Bone.

Mr. *Jones*. Did you see nothing round her Neck?

Kimpson. Nothing round her Neck; on the side of her Neck there was a Mark.

Mr. *Jones*. Was any other Part bruised?

Kimpson. Only her Left Wrist; and her Body was very flat and lank.

Mr. *Comper*. Was she not lac'd?

Kimpson. Yes, she was lac'd.

Mr. *Jones*. Did she seem swell'd, or any Water come from her?

Kimpson. I did not observe the least Drop. I had a Child drown'd about Ten Weeks ago, in the Night, and we found her next Morning at the Bottom of the Water, and she was swell'd as much as could be, though the Child's Coat was lac'd tight; and we had it open'd, and it was very full of Water.

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Mr. *Comper*. Had the Child any Settlement of Blood?

Kimpson. I saw none, tho' I view'd the Body.

Sarah Peppercorn Sworn.

She deposed, That she was sent for to Mrs. *Stout*'s to view the Corps, it being rumour'd that she was with Child: That she saw the Body after it was brought to her Mother's, and help'd to strip off her Cloaths, and she found she was not with Child; and the Body was as well as any Woman's could be, save that there was a black Place on the side of her Head, and another about her Ear.

Mr. *Jones*. Did you observe any Water come from her?

Peppercorn. No; there was a little Froth, as any body might have.

Elizabeth Husler Sworn.

Mr. *Jones*. Did you view the Body of Mrs. *Sarah Stout*, the Day you heard she was drowned?

Husler. She was not drown'd; I help to pull off her Cloaths, her Body was very lank and thin, and no Water appear'd to be in it.

Mr.

Mr. Jones. Did you mind her Neck and Head?
 Husler. Yes, there was a Settling of Blood at
 the Top of the Collar Bone, and a Settling of
 Blood upon both her Ears, most about her Left
 Ear.

Anne Pilkington Sworn.

Shedeposed, That she view'd the Body, and did
 not perceive it to be at all swell'd.

Mr. Jones. Was there any Water came out on
 the moving it?

Pilkington. No; and on a further View, I saw
 a Redness on the Left side of her Head, and her
 Ear was black, and there was a little Mark on the
 Left side of her Breast, reddish and blackish,
 like a Settling of Blood.

Mr. Cowper. Did not you make some Deposi-
 tion, that she had a Circle about her Neck.

Pilkington. No, I never did; I dare not do it.

Mr. Cowper. It was read against me in the
 King's-Bench, Did not Mr. Mead put in some
 Words?

Pilkington. Not that I know of; and if I swore
 so, 'twas ignorantly.

Mr. Jones. Here is her Examination, it is cross
 her Neck.

Mr. Cowper. Was Mr. Young, of Hertford, the
 Constable, present when you was examined?

Pilkington. He was so: The next Day Mrs.
 Stout sent for me to put on her Daughter's Shroud,
 and I was one that help'd to draw the Sheet away,
 and there was not one Drop of Water came from
 her?

Cowper. Do you know any thing of her being
 convey'd into the Barn?

Pilkington. I happened to be in the Barn, Mrs.
 Stout desir'd me to go with her, she was brought
 up in an undecent manner, and I put a Sheet a-
 bout her; I was in Mrs. Stout's House before her
 Daughter was brought thither.

Mr. Coatsworth, the Surgeon, Sworn.

He deposed, That in April last, he was sent for
 by Doctor Philips, to come to Hertford, to see
 the Body of Mrs. Stout open'd, who had been buri-
 ed Six Weeks; and the Doctor told him there was

The Surgeon's
 Evidence, who
 view'd the
 Body and o-
 pen'd it, after
 it had been
 buried Six
 Weeks.

a Page 416.

a Suspicion she was murdered, and her Relations would have her taken up and open'd: That on the 27th of *April* he lay at Mrs. *Stout's*, and he understood by her, she wanted to be satisfied whether her Daughter was with Child.— That on the 28th the Corps was opened, that her Face and Neck, to her Shoulders, appeared black, and so much corrupted, that they were unwilling to proceed further; however, her Mother would have it done, and she was open'd, and they perceiv'd the Stomach and Guts were as full of Wind as if they had been blown with a Pair of Bellows: That they put the Guts aside and came to the *Uterus*, and Dr. *Philips* shew'd it in his Hand, and afterwards cut it out and laid it on the Table, and open'd it, and they saw into the Cavity of it, and if there had been any thing there, as minute as a Hair, they might have seen it; but it was perfectly free and empty: That the Stomach was opened with an Incision Knife, and it sunk flat, and let out Wind, but no Water. Afterwards they opened the Breast and *Lobes* of the Lungs, and there was no Water; nor any in the *Diaphragma*, but all was dry: And he remember'd he then said, *This Woman could not be drowned, for if she had taken in Water, the Water must have rotted all the Guts.* As to any Marks about her Head and Neck, it was impossible to discover them, because they were so rotten.— That he told Mrs. *Stout* and her Son, if they imagin'd the Skull to be injured, he would open the Head, for if the Scalp were never so rotten, if the Skull had suffer'd any Impression he should discover it; but they said they did not suspect a broken Skull, and so he did not examine it.

Mr. *Jones*. But all the other Parts were found.

Coatsworth. Yes, found, to a Miracle; for I did not imagine we could find them so.

Mr. Cowper objects, That this Evidence was illegal, for that the Body was taken up, and view'd without Authority.

Mr. Cowper. I think where the Coroner's Inquest have view'd the Body, and the Relations have been heard, and the Body buried, it ought not to be stirr'd again for any private Inspection, of Parties that intend to make themselves Prosecutors, but if he be taken up it ought to be done by some

some legal Authority, otherwise a Man may be easily trapann'd; they might, after the Coroner's View, break the Skull into a Hundred Pieces: This was a private View, and if they intended to prosecute me upon this Evidence, they ought to have given Notice, that we might have had some Surgeons among them to superintend their Proceedings; and therefore, with Submission, this ought not to be given in Evidence.

Bar. *Hatsel*. If they did take up the Body without Notice, Why should not that be Evidence?

Cowper. Had you a *Melius inquirendum*, or any lawful Warrant, for making this Inspection?

Coatsworth. No, there was not.

Bar. *Hatsel*. Suppose they did an ill thing, in taking up the Body without some Order; though I know no more ill in taking up that than another Body, but however, Is that any Reason we should not hear this Evidence?

The Court hold this to be good Evidence.

Coatsworth. Mr. *Camlin*, Sir *William Cowper's* Surgeon, Was there by.

Mr. *Dimsdale*, Sen. was Sworn.

He deposed, That he was at the opening of the Body, and that they found it as sound as any Flesh could be: That they searched the Stomach and *Thorax*, and found not one Drop of Water about it; and that he saw no manner of Sign of Conception in the *Uterus*: That they had afterwards a Consultation to consider if she was drowned or not, and they were all of Opinion she was not drown'd, except Mr. *Camlin*, who desir'd he might be excused giving his Opinion whether she was drowned or not.

Mr. *Jones*. Why did you believe she was not drowned?

Dimsdale. Because we found no Water in her, and if there had been Water in her it would have caused a Fermentation, and that would have rotted her Lungs and Guts.

Bar. *Hatsel*. Could you tell so many Weeks after, Whether she was drowned or no?

Dimsdale. Yes, for if she had been drowned, there had been some sign of Water, if there had been a Pint of Water, it would have rotted her
Lights

Lights and her Guts; that is done in a Week's time by Fermentation.

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Comper. Is it possible, after Six Weeks time, there should be Water in the *Thorax*.

Dimsdale. I believe there may be some, for it can't get out after the Body is dead, but by Putrefaction, and there was no Putrefaction; but it was very firm and sound.

Bar. Hatsel. What Parts would you have putrified by the Water?

Dimsdale. The Lungs and Bowels.

Juryman. Was her Navel started?

Dimsdale. No, I never saw such a Body in my Life.

Comper. Did you ever see a Body that was drowned, opened Six Weeks after?

Dimsdale. No, but if a Body be drowned a Fortnight, the Bowels will be so rotten there will be no coming near it; and I took particular Notice, and did not see one Drop of Water, the Coffin was close and dry, and all Parts of her sound, but the Head and Neck, and Left Arm.

Mr. Jones. What do you take to be the Cause of that?

Dimsdale. I can't judge of that.

John Dimsdale, Jun. Sworn.

He deposed, That the Body was opened before he came, and they were drawing up an Affidavit, that there was no Water in it, which they desir'd him to sign, supposing he had seen it; that then he went and look'd into the Body, and turned the Intestines aside, and found no Water in it; but the Head from the Neck was very much putrified.

Mr. Jones. What Difference was there between the Child that was drowned (and you opened) and this Body?

Dimsdale. The Child was extremely swelled in the Body and Stomach, and had abundance of Water in it.

Comper. How long was it before the Child was opened?

Dimsdale. It was drowned in the Afternoon, and opened the next Morning.

Dr. Robert Dimsdale, the Physitian, Sworn.

He deposed, That he came with his Brother after the Body was opened, and they were setting their Hands to a Paper, and desired them to set their Hands; and that thereupon, they went and opened the Body again, and they did not find a Drop of Water, either in the *Thorax* or *Abdomen*.

Bar. Hatsel. Could you expect to find it Six Weeks after?

Dr. Dimsdale. We should have expected that or a Putrefaction, but we found no Putrefaction, either in the Bowels or Intestines, but only upon her Head and Shoulders, and one Arm.

Cowper. Pray, By what Passage does the Water go into the *Thorax*?

Dr. Dimsdale. 'Twill be difficult for me to describe the manner here, but we should have found some in the Stomach and Intestines.

Cowper. Pray Sir, How should it go into the *Thorax*?

Dr. Dimsdale. By the *Lymphaduct*, if carried by any means.

Cowper. Can Water pass into the Body after it is dead?

Dr. Dimsdale. No, for all the Parts are closed and contracted; but we opened the *Abdomen* of the Child that was drowned, and found in the several Cavities abundance of Water.

Cowper. If a dead Body be put into the Water, Will not the Water come into the Wind-Pipe?

Dr. Dimsdale. I question whether it will or no.

Cowper. Did not you give some Certificate, concerning the Death of this Gentlewoman, before you saw the Body?

Dr. Dimsdale. No, I did not.

Cowper. Was not you angry with Camlin, because he would not join with you; and told him you was a Graduate Physitian?

Dr. Dimsdale. Yes, We had some Words about it.

Dr. Coatsworth Sworn.

He said, It was his Opinion, that every body that is drowned, is suffocated by Water passing down the Wind-Pipe, into the Lungs, upon Respiration;

Page 412.
Whether a Body that is drown'd must not of necessity have a Quantity of Water in it?

tion ; and at the same time, the Water pressing upon the Gullet, there will be a Necessity of swallowing a great deal into the Stomach : That he had been near drowning himself, and was forc'd to swallow a great Quantity of Water. If a Person was drowned, and taken out immediately, as soon as the Suffocation was effected, he should not wonder if there was but a little Water in the Stomach and Guts ; but if it lay in the Water several Hours, it must be strange if the Belly was not full of Water ; though he could not say it was impossible to be otherwise.

Comper. But you struggled to save your self from drowning.

Coatsworth. I did so : I have seen several Persons that have been drowned, and lain several Days, until, by a Fermentation, they have been raised ; but I never made Observations on Persons who had been drowned about Six Hours.

Dr. Naylor Sworn.

He said he was of Opinion, If a Body was drowned it would have a Quantity of Water in it ; and if there was no Water in the Body, he should believe the Person was dead before it was put into the Water.

Comper. Was not you a constant Voter, against the Interest of our Family, in this Corporation.

Naylor. I never came to give a Vote, but Sir *William Comper* or his Son oppos'd it, and said, I had no Right to Vote.

Comper. The *Dimsdales* are of the same Party, I would have ask'd them this Question.

Bar. Hatsel. It is not material, as they are Witnesses.

Babington, a Surgeon, Sworn.

He said he was of Opinion too, That Persons who are drowned, whether by Design or Accident, would have Water in them, and sink as soon as they are drowned, and don't rise so soon as this Gentlewoman did : That he had a Patient who was half an Hour under Water, and liv'd several Hours afterwards, and in that time discharged a great Quantity of Water.

Comper.

Cowper. Did the Woman you speak of go into the Water voluntarily, or fall in by Accident?
Babington. By Accident; but I don't believe that alters the Case.

Dr. Burnet Sworn.
 He deliver'd his Opinion also, That if a Person falls into the Water by Accident, or throws himself in, the Body will receive Water as long as it is alive; but after all Endeavours for Respiration were over, he thought no Water would come in, for that all the Parts were closed.

Mr. Jones. Do they swim or sink?

Dr. Burnet. They sink: I never saw a Person drowned taken up without Water; but I have seen several full of Water.

Dr. Woodhouse Sworn.
 He was of Opinion, That where a Person is suffocated by Water, he must have a great deal of Water in his Stomach, and some in his Lungs; that he had opened a Child that had a great Quantity of Water in it, and some in the Throat.

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Cowper. Which way can it pass into the Thorax?

Dr. Woodhouse. While a Person is struggling for Respiration, there may be a Relaxation of—and the Person must suck in Water as well as Air; and some Water may get into the Wind-Pipe, and so into the Lungs.

Cowper. Is there a Passage from the Lungs to the Thorax?

Dr. Woodhouse. The Wind-Pipe is the Conveyance to the Lungs, the Lungs lie in the Thorax; and the Person in Respiration, takes down some Water there, though the greater Quantity will be in the Stomach.

Bar. Hatsel. Will the Inwards putrifie in a little time?

Dr. Woodhouse. If Water gets into the Stomach, or wherever it is, it will putrifie very soon.

Edward Clement, a Seaman, Sworn.

He deposed, That during the Engagement at *Beachy* Fight, he saw several dead Bodies floating who were thrown over-board, and one he observed more particularly, who was his Friend, and kill'd just by him: Another he took Notice of

Whether a Body thrown dead into the Water will sink or swim.

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of, who had his Legs shot off, and they threw his Legs over, and they sunk; but he saw his Body float, when it was thrown over. And that when Men died Natural Deaths, they had a considerable Weight of Ballast and Shot fastned to them, when they were thrown overboard; holding, that all Men would swim, who came dead into the Water. On the contrary, he had seen Men who were drown'd, sink as soon as the Breath was out of their Bodies.

Jones. How did the Bodies float, that were thrown in, in the Fight?

Clement. With their Heads just down, and the small of their Backs, and Buttocks upward. I saw some Hundreds in *Beachy* Fight (I can't guess to a Score) that did really swim; I could see them float for a considerable distance.

Jones. Have you seen a Shipwreck?

Clement. Yes, in *September*, 1691, I saw the *Coronation* wreck'd: We saw them taking down their Masts, and the Men walking up and down on the Right Side; and the Ship sunk down, and they swam about like a Shoal of Fish. I saw them hover one upon another, and saw them drop away by Scores at a time. And there was not above Nineteen sav'd out of the Ship's Compliment, which was Five or Six Hundred: I saw them sink downright, Twenty at a time.

Jones. I suppose all Men that are not drown'd, you sink them with Weights:

Clement. Formerly, Sixty Pound Weight of Iron was allow'd: Now, a Bag of Ballast is fastned to them.

Richard Gin, another Seaman, Sworn.

He depos'd, That all the Men he had seen heav'd overboard, had great Weights to sink them.

Mr. Jones. Then, Gentlemen of the Jury, I hope We have given you Satisfaction, that *Mrs. Stout* did not drown herself, but was carried into the Water, after she was kill'd. And you have had Evidence, that *Mr. Comper* was the last Man in her Company: I shall only give this further Evidence, that notwithstanding the Intimacy between the two Families, *Mr. Comper* did not
opce

once come to consult with old Mrs. Stout, what was to be done; but rode out of Town next Day, without taking any Notice of the Thing.

John Archer Sworn.

He depos'd, That Mr. Cowper went out of Town the back Way, from the *Glove*, on the Wednesday Morning after this Accident.

Cowper. Is it not the Way I us'd to go, when I go the Circuit into *Essex*?

Archer. I believe so.

George Aldridge Sworn.

He depos'd, That he went for Mr. Cowper's Horse, to Mrs. Stout's, three times; and that he brought him away from thence, about Eleven a Clock on Tuesday Night: And that Mr. Cowper bid him fetch him, because he was to go out early next Morning with the Judge.

Cowper. When I heard she had drown'd herself, I sent for my Horse, for fear the Lord of the Manor should seize him.

Mr. Bar. Hatsel. There was no Danger of that; She was found *Non Compos.*

Cowper. I sent before the Verdict.

Jones. It seems you did not think fit to take Horse there; though you set your Horse there. We shall now proceed to give Evidence against the other three Gentlemen, who took Lodgings at *Gurrey's*.

John Gurrey Sworn.

He depos'd, That last Assizes, while he was at Evidence of Church, the Prisoners, *Stevens* and *Rogers*, came to the Discourse his House, and took Lodgings of his Wife. That the other about Eleven at Night, those two came in, and three Prisoners had at the Prisoner *Marson* with them; and they agreed their Inn, all to lie together, and went up into their Chamber, and had a Fire. And the Deponent fetch'd Mrs. Stout, concerning them a Quart of Wine, and on their desire, he that Night the Accident fat down with them. And they ask'd, If one Mrs. *Sarah Stout* did not live in Town, and if she was not a Fortune: And said, they did not know how to come to a sight of her. And the Deponent said, he would show them to her the next Morning: And they said, they would go and see her; and *Rogers* and *Stevens* said, *Marson* was an old Sweet-heart!

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heart of hers: And *Marson* said, She had thrown him off, but a Friend of his was even with her by this time.--- That the Deponent observ'd *Marson* was hot, and put off his Wig, and his Head was wet: And *Marson* said he was just come from *London*, and that made him in such a Heat.— That the next Morning, he heard of Mrs. *Stout*'s being found in the Water, and went to the Barn where she was laid, to see her: And as he came back, he met his three Lodgers; and, they said, they were going to see the Corps. And *Rogers* said, jocularly, O Landlord, you may take up that Rogue *Marson*, for what he said last Night. And that he return'd with them to the Barn, and saw, and touch'd the Deceas'd; but looking about for his Friends, they were gone; and he did not know, whether they saw or touched her. And, That about Eleven a Clock, he saw *Marson* and *Stevens* coming with Mr. *Spencer Comper* down to the Market-Place.

Comper. Had you not some Discourse with your Sister, the Widdow *Davis*, concerning some suspicion you had of *Sarah Walker*, who has been produc'd as a Witness: And did not your Wife and you say, you must not meddle with *Sarah Walker*, for she was a Witness against the *Compers*.

J. Gurrey. I said, Do not concern your self with *Sarah Walker*, for fear of taking off her Evidence.

Comper. Did not you say to your Sister *Davis*, Now these Gentlemen are in Bed, if Mr. *Gape* would come Home, our Family would be quiet.

J. Gurrey. I don't remember that; but I went to Mrs. *Hockley*'s to look for Mr. *Gape*; and Mrs. *Hockley* went in, and told him what time of Night it was. It was Eleven or Twelve a Clock, I can't say whether.

Martha Gurrey Sworn.

She depos'd, That Mr. *Stevens* and Mr. *Rogers* came to hire the Lodgings about Five a Clock, and went away presently; and return'd about Eleven or Twelve that Night, and brought Mr. *Marson* with them; and made some Excuse for it: And ask'd, If she was willing he should lie with them; and

and she said, she was satisfied. And they had a Fire, and sent for her Husband to fetch them some Wine. And they discours'd with her Husband, and ask'd him, If he knew Mrs. *Sarah Stout*: And one of them said to Mr. *Marson*, I think she was an old Sweetheart of yours: Ay, says *Marson*, she turn'd me off, but a Friend of mine is even with her. And Mr. *Rogers* said, He was in with her; and afterwards said, her Business was done. And they had a Bundle wrapp'd in a pure white Cloth, like an Apron, and a Parcel hanging loose by it: And when he laid it down, he said, He'd pass his Word, Mrs. *Sarah Stout's* Courting Days were over. And the Deponent answer'd, she hop'd it was no hurt to the Gentlewoman: And then, as she look'd at Mr. *Marson*, she saw him put his Peruke aside, and his Head reek'd; and he told them he was but just come from *London* that Night, which made him disappointed of a Lodging. That she went into the next Room, and hearkned, and they had some Discourse about Money: And *Stevens* (she thought) said, the Use Money was paid to Night.-- That when they were gone, she found a Cord at the end of the Trunk, which was not there when she swept the Room in the Morning: And her Daughter brought the Cord down Stairs, and they laid it up.

Cowper. Why did not you give an Account of this to the Coroner's Inquest?

M. Gurrey. I told my Husband, I thought he ought to take them up: And he said, he would not do it; he did not know but it might cost him his Life. Tho', when I heard the Words, I thought somebody had stole Mrs. *Stout*, or got to Bed to her.

Mr. Jones. How came you, after this, to discover it?

M. Gurrey. I was so troubled about it, I could not rest Night nor Day; and I told him, if he would not tell it, I would.

Elizabeth Gurrey Sworn.

She depos'd, That *Marson* ask'd the other Gentlemen how much Money they had spent; and they answer'd, What was that to him, you have

had Forty or Fifty Pound to your Share. And ask'd him, If the Business was done; and he answer'd, he believ'd it was: But if it was not done, it would be done to Night. And he pull'd out a handful of Money, and swore he would spend it all, for joy the Business was done: And she heard them mention Mr. Comper's Name,

Mr. Jones. What Condition were the Gentlemen's Shoes in?

E. Gurry. I think it was Mr. Marson's Shoes were wet and dirty; and one of them was very hot, and he wip'd his Head with his Handkerchief.

[Here Marson's Examination before my Lord Chief Justice Holt, was read.]

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“ He saith, he was an Attorney of the Borough-
 “ Court in Southwark; and on the 13th of March,
 “ set out from the Borough, about Four in the
 “ Afternoon, and came to Hertford about Eight:
 “ And having put up his Horse at an Inn, he went
 “ to the Glove, with Mr. Gimbart, Mr. Stevens,
 “ and Rogers; and staid there 'till Eleven, and
 “ then went to Gurrey's, where he lodg'd. That
 “ one Mr. Thomas Marshal, having desir'd him,
 “ before he came from London, to go and see Mrs.
 “ Sarah Stout, his Sweetheart; he did ask Gurrey,
 “ if he would show him the Way to Mrs. Stout's;
 “ and told him his Name was Marshal: And jo-
 “ cularly said, he would go see her next Morn-
 “ ing; (but did not believe he said, any Friend
 “ of his was ever with the said Sarah Stout.) And
 “ on Gurry's telling him of the Accident, next
 “ Day; he confesses he did say he would keep his
 “ Word, and see her. And that meeting with his
 “ Acquaintance, Mr. Comper, the same Morning,
 “ he owns he did talk with him about Mrs. Stout's
 “ being drown'd.

Mr. Jones. What I observe from it, is this, That he had been three Hours in Town, and he came into his Lodging wet and hot, and said he was just come from London, It is wonderful he should come wet and hot.

wetshod from a Tavern, where he had been sitting so long.

Marson. I had rid Forty Miles that Day, and could not be soon cold.

Mrs. Richardson was Sworn.

She depos'd, That these three Gentlemen came to the *Bell Inn* at *Hoddesdon*, and lay there on the *Tuesday* Night. And they ask'd the Deponent, if she knew *Mrs. Sarah Stout*, and how she came by her end: And they had a little Bundle bound up in some colour'd Stuff.

Then *Mr. Cowper* enter'd upon his Defence. He said, It was an unfortunate Accident indeed, that he happen'd to be last in Company of a melancholy Woman. That the Discourse occasion'd by this Accident, had been a sufficient Misfortune to him: But he did not imagine, that so trivial an Evidence could have affected him to that degree, as to bring him to that Place, to answer for the worst Fact, that the worst of Men could be guilty of. That if the Deceased was murder'd, the Crime was base, barbarous, and cruel. But at the same time, to charge innocent Men, knowingly and maliciously, with a Murder, without good Grounds for it, was as base and barbarous as the Murder it self could be: And for his own part, he had much rather his Person should be murder'd, than his Reputation.

Mr. Cowper's
Defence.

That he did not observe from the Evidence, there was any positive Proof that the Deceased was murder'd. That there was but a bare Suspicion she was murder'd by any body; much less was there any Evidence, that himself, and the other Gentlemen at the Bar, were concern'd in it: And he did not doubt but to wipe away, even the most remote Suspicion, by his Defence. He observ'd, That though a drown'd Body will at first sink, yet it is *buoyant*: That it does not go down right, and rest in one Place, like Lead; but is driven by the Current, (though it does not float above Water) and when it comes to be stopp'd and resisted by Stakes, which lie with their Heads downwards, inclining with the Stream; the Stream bearing the Body against the Stakes, must needs

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raise it upwards, to find another Passage, if possible; when the Ordinary and Natural is obstructed. And as to the Body having no Water in it; very little Water would drown a Man, especially, where the Person is voluntarily drown'd. In that Case, the Persons plunge into the Water, to dispatch a miserable Life as soon as they can: And so that little quantity in the Lungs, which causeth Death, may be the sooner taken in; after which, no more is receiv'd. As to the Evidence of the Surgeons who open'd the Body, six Weeks after it had been buried; what they had deliver'd in that Matter, he should make appear, proceeded either from extreme Malice, or a most profound Ignorance.

And if it was consider'd, under what Circumstances he was accus'd of this horrid Action, the Thing would still appear more improbable. In the whole Course of his Life, they could not say he had been guilty of any mean or indirect Action. And for one in the Condition he was in, of some Fortune in possession, related to a better; in a good Imployment, thriving in his Profession, living within his Income, never in Debt; void of all Malice, and having no possibility of making any Advantage by her Death: And to be guilty of murdering her, and to begin at the top of all Baseness and Wickedness; this, he said, was very incredible. That his Enemies seeing a Necessity of assigning some Cause, had, indeed, suggested formerly, that he was concern'd in the Receipt of her Money, and in her Securities: But this they had dropp'd; they had not offer'd a Syllable of Proof upon this Head. And, in Truth, he never had any Concern of this Nature with her, unless the Assigning one Mortgage of 200*l.* to her: Which Assignment was found among her Papers, after her Death. That as there appeared neither Malice nor Interest to induce him to do this, so they had prov'd for him, that there was no concealment of Shame, to prompt him to commit so barbarous a Fact. And though they did not design him any Favour, yet in endeavouring to vindicate her Honour, they had secur'd his Reputation against this Calumny. That

That it was not without a great deal of Reluctance, he should be forc'd to produce some of her Letters: And indeed, he should not have done it; if he had not those innocent Gentlemen, who were with him, to defend, as well as himself. And tho' it might be said, he ought in Honour to conceal the Weakness of this Gentlewoman; yet, in Honour and Justice to those Gentlemen who were accus'd with him, he could not do it. And he hop'd this would excuse him to the World.

He observ'd further, That this Business slept, near two Months after the Coroner's Inquest, before he heard of it: And was never stirr'd, till two Parties differing on all other Occasions, had laid their Heads together. That one of the greatest Quakers (*Mead*) had very much, and indirectly too, concern'd himself in this Matter. That the Quakers apprehended the Reputation of their Sect was at Stake: And that the other Party who liv'd in the Town, and join'd with them, and gave their Opinions as to the manner of her Death, were possess'd with much prejudice against him, upon Feuds that had risen at the Election of his Father and Brother in Town. That these, with the Quakers, had dress'd up this Matter for several Ends: The One, to maintain the Reputation of their Sect; and the Others, to destroy the Interest of his Family in the Place.

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He confess'd, when he left *London*, he had a Design of lodging at Mrs. *Stout's*, being invited by Letter so to do: But his Brother having taken Lodgings at Mr. *Fairbeard's*, and being oblig'd to attend the Parliament; and he (the Prisoner) understanding by Mr. *Fairbeard*, that they had not had Notice of his Brother's staying in *London*, and they had reserv'd their Lodgings for him: And he, (the Prisoner) being us'd to lodge at Mr. *Fairbeard's* with his Brother, and they being the most convenient Lodgings in Town, he did determine to be there; and had his Things, accordingly, brought thither. That immediately after his Things were brought to Mr. *Fairbeard's*, *Sarah Walker* came for him to Dinner, at her Mistress's, Mrs. *Stout's*, and he Dined there. And when he came away,

away, he might say he would come again at Night; having 6*l.* to pay her; being the Interest of the 200 *l.* he put out for her: But he positively deny'd, that he said he would lie there.

That he should produce his Witnesses, and shew there was no Evidence of any Murder committed; which ought to be indisputably prov'd, before any One ought to be suspected for it.

Mr. Bar. *Hatsel.* Don't flourish too much, Mr. *Comper*: Call your Witnesses, and make your Observations afterwards.

Robert Dew, an Officer of the Parish, call'd.

Mr. *Comper*
calls his Wit-
nesses.

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He depos'd, That a Boy came to him about Six in the Morning, and told him there was a Woman fallen into the River: Whereupon, the Deponent sent and acquainted the Coroner with it; and the Coroner sent Word again, that she should be taken out; and the Deponent went and saw her taken out. That she lay half a Foot in the Water, and had a strip'd Petticoat on; but nothing of it could be seen above the Water. That he heav'd her up, and several Sticks and Flags were underneath her; and when they took her out, she froth'd at the Mouth and Nose.

Comper. Was she driven between the Stakes?

R. Dew. She lay on the Right Side, her Head leaning rather downwards; and as they pull'd her out, I cry'd, Hold, you hurt her Arm: And they kneel'd down, and took her Arms from the Stakes. And she had a red Spot on her Arm, which, I believe, the Stakes made.

Comper. How do those Stakes stand?

R. Dew. About a Foot asunder; they stand slanting, leaning down the Stream.

Comper. Might not her Knees be upon the Ground for ought you could see?

R. Dew. I durst not swear that; there is sometimes four Foot Water, and sometimes three and a half: I believe her Feet were very near the bottom.

Comper. What was the appearance of her Face, and upper Parts?

R. Dew.

R. Dem. She was so much disfigured, I believe scarce any of her Neighbours knew her; the Slime of the Water being upon her.

Young, the Constable, call'd.

He depos'd, That being told a Woman was drown'd at the Mill, he went down to see; and he found part of her Coat lie upon the Water: And looking nicely within the Bridge, he saw the Face of a Woman; and her Left Arm was on the outside of the Stakes. That as he was coming away, he met *R. Dem.*, and went back again with him; and they order'd *Dell* and *Ulse* to take her up. And one of them took hold of her Coat, 'till he brought her above the Water: And she laid side-way, so that they could not take her up, 'till they let her down again. And they twisted her out, side-way, for the Stakes were so near together, that she could not lie either upon her Belly or her Back. That a great quantity of Froth work'd out at her Nostrils, when she was laid upon the Bank.—— That she looking like a Gentlewoman, they search'd her Pockets; and found Six Guineas, Ten Shillings, and Three Pence half Penny. And none of them yet knew her, though near Twenty of her Neighbours were there.

Cowper. What depth of Water was there?

Young. I measur'd the Water this Morning, and it was four Foot two Inches; and to the best of my remembrance, it was much about the same height then, as it was to Day.

Cowper. Who was there beside your self?

Young. Twenty People at least.

Mr. Jones. And Ten of them have sworn, the Body was above the Surface of the Water.

Mr. Bar. Hatsel. No, Her Cloaths they say was; but the Body was something under Water.

Cowper. Now I will produce a Copy of the Inquisition, that she was found to drown herself.

Mr. Bar. Hatsel. That is no Evidence, to contradict what the Witnesses for the King have said; but if you will prove they swore otherwise before the Coroner, than they do now, you say something: But the Coroner's Inquest signifies nothing to the present Question,

Cowper.

The Coro-
ner's Inquest,
find the De-
ceased Non
Compos.

Comper. Do they admit she was found *Non Com-*
pos, and did kill herself?

Mr. Jones. We do admit it.

Thomas Wall appear'd.

He depos'd, That he was one of the Inquest, and view'd the Body, and there were no Marks upon it, except a little Mark about the Ear, and something near her Collar-Bone. That they desir'd *Mr. Dimsdale* and *Mr. Camlin* to see them; and they both went down and view'd the Body, after it was brought to *Mrs. Stout's*; and then return'd to the Jury. And *Mr. John Dimsdale*, the younger, told them, these Marks were no more than was usual in such Cases; and it was only the stagnation of the Blood.

Comper. Pray, What time did *Sarah Walker* say I went from *Mrs. Stouts*?

Wall. She said it was about Eleven a Clock, when she took up Coals to warm the Bed; but she did not know when *Mr. Comper* went out. For *Mr. Comper* not coming up, she said, she took up more Coals, and tarried a little longer; and nobody coming, she went down, and found *Mr. Comper* and her Mistress gone.

Mr. Bowden call'd.

He depos'd, That hearing of this Accident, he went down to see the Body; and he saw a great deal of Froth come out of her Mouth and Nostrils.

Mr. Jones. Was not her Mouth shut?

Bowden. I did not observe that.

Mr. Shute call'd.

He depos'd, That he was summon'd to be of the Inquest, and he perceiv'd the same Stuff work'd out at *Mrs. Stout's* Nostrils, as did out of the Child's that was drown'd there.

Dr. Sloane call'd.

He deliver'd it as his Opinion, That a great quantity of Water, swallow'd by the Gullet into the Stomach, would not suffocate or drown a Person: But he had observ'd a few Spoonfuls, going into the Windpipe, choak a Person. And he believ'd, whether a Person came dead or alive into the Water, some quantity would get into the Windpipe; but he thought, without Force, little would go into the

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The Opinion
of the Physi-
cians, as to
the floating of
a Body that
is drown'd,
and the ha-
ving of Wa-
ter in it.

Stomach after Death: For if it should, swallowing was necessary; which after Death, could not be done.

Mr. Bar. *Hatsel.* But if Water had been in the Body, would it not have putrified the Parts, after it had lain six Weeks.

Dr. *Sloane.* I'm apt to think it would have putrified the Stomach, less than the Lungs; because the Stomach is contriv'd for receiving Liquids: Whereas the Lungs are only for receiving Air. They being of a spongy Nature, the Water might sink more into them, than into the Stomach: But I believe it would putrify there too, after some time. When a Body is buried, the Fermentation will be greater or lesser, according to the depth of the Grave, the difference of the Weather and Soil, and the several Kinds of Meats and Liquids in the Stomach. And, no doubt, but there will be a Fermentation, more or less, according as the Air comes to the Body; but where the Air is wholly shut out, it may be otherwise. And this is, at present, suppos'd to be the antient Way of Embalming; and is suppos'd to be, in a great measure, owing to the closeness of the Coffin.

Cowper. Is it possible for any Water to pass into the *Thorax*?

Dr. *Sloan.* It is hardly possible any should go from the Windpipe, into the Cavity of the *Thorax*, without great violence; for there is a Membrane that covers the outside of the Lungs, and will hinder the Water passing through it, into any part without them.

Cowper. Do you think it possible to find Water in a drown'd Body, after six Weeks time?

Dr. *Sloane.* I am apt to think, if there was any quantity in the Lungs, the sponginess of them would suck up some part of it. And as to the Stomach, if there was any great Fermentation, 'twas likely a great part of it would rise up in Streams and Vapours, and would go off that Way.

Dr. *Garth* appear'd.

He said, He agreed with Mr. *Coatsworth*, and the rest of the King's Witnesses, as to Mrs. *Stout's* not being with Child; but he could not conclude
with

with them, that she was murder'd: Either, because they found no great quantity of Water in her; or, because her Head was mortified, and not her Lungs and Bowels: And was of Opinion, that Water did not hasten Putrefaction. And as to the Putrefaction of the Head, it might happen from a stoppage of the reflux Blood; which is staid in a great quantity, through the suffocation in the Water: Or from the nearness of the Brain, which is observ'd to mortify first.

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That as to the floating of the Body, he held it impossible the Body should have floated, unless it had rested, or been intangled among the Stakes. For that all dead Bodies, he believ'd, would fall to the bottom, unless they were prevented by some extraordinary Tumour. And as the Witnesses agreed she was found upon her Side, it was as hard to conceive she should float so, as that a Deal-board should float edgeways: And therefore he thought it plain, she was intangled.

That he believ'd, when she threw herself in, she might not struggle to save her Life; and consequently, not sup up much Water. For there was no direct Passage into the Stomach, but by the Gullet; which is contracted or purs'd up by a Muscle, in the Nature of a Sphincter.

Bar. *Hatsel*. What do you say to what Dr. *Sloan* said, that Water in the Body, will putrify it?

Dr. *Garth*. I say not; For in some Places they keep Flesh from corrupting, by preserving it in Water: And 'tis well known, it will putrify less so, than when expos'd to Air.

Bar. *Hatsel*. What do you say to what the Seamen said, That those who die at Sea, and are thrown over-board, won't sink, without a Weight tied to them?

Dr. *Garth*. The Seamen are a Superstitious People: They fancy, that whistling at Sea, will occasion a Tempest. We have try'd some Experiments on other dead Animals, since we came hither; and they certainly sink. And there is Reason to suspect the Seaman's Evidence; for he said, Sixty Pound Weight was allow'd to sink a dead Body, when Six or Seven Pound would do as well.

BUT

But the Design of tying Weights to their dead Bodies is, to prevent their floating afterwards.

Cowper. Could any Quantity of Water enter the Cavity of the *Thorax*?

Dr. Garth. 'Tis impossible their should, 'till the Lungs are quite rotten; there is no way but by the Lungs, and they are invested with so strong a Membrane, that we cannot force Breath with our Blow-Pipes through it.

Dr. Morley appeared.

He said he was of Opinion, That there was no Necessity a Person drowned should have a great Quantity of Water in him; that Two Ounces of Water would drown a Man as well as Two Tun: That they drowned a Dog the last Night, and found not a Spoonful of Water in his Stomach, and about Two Ounces in his Lungs; that they drowned another, and he did not float, but sunk to the Bottom; and when they opened him they found much the same Quantity of Water in his Lungs, and hardly any in the Stomach, that both froth'd at Nose and Mouth; and he thought if Bodies new kill'd swim, it was by Accident; and the Reason that Bodies swim afterwards was, because by Putrifaction they rarifie and grow lighter.

Cowper. Is it possible to know, Six Weeks after, if a Person was drowned?

Dr. Morley. I think it morally impossible.

Cowper. Can there be any Water in the *Thorax*?

Dr. Morley. By an Imposthume, or Violence to Nature, possibly, not otherwise.

Dr. Woolaston appeared.

He said he was of Opinion, It was impossible to know whether a Person was drowned Six Weeks after; that had there been never so much Water in the Body it must have forc'd its way out, that there was nothing to hinder its working out when it ferments, as it always does: That about Three Years since, he saw Two Men that were drowned out of the same Boat and taken up the next Day; one of them was prodigiously swell'd and black in the Face, the other not in the least swell'd or discoloured, but lank as ever he was in his

his Life, and not the least Water in him ; except a watry Froth at his Mouth and Nostrils.

Mr. *Jones*. Did you see the Bodies taken out of the Water ?

Dr. *Woolaston*. No, but I enquired, and to the best of my Remembrance, it was the same Day.

Bar. *Hatsel*. What do you think of a Person's being drowned without taking in any Water ?

Dr. *Woolaston*. What is taken in is chiefly at the Surface of the Water, when they open their Mouths for Breath the Water rushes in, and they drink it down to keep it from their Lungs ; but when the Head is quite under Water, I don't think it possible for any great Quantity to get down into the Stomach, because it being Breath they open for, the very first Water they take in would of Necessity fill the Lungs ; and when the Breath is stopp'd, I don't see how they can swallow.

Dr. *Gilstrop* appeared.

He declar'd, He did not think any Judgment could be made of Persons being drowned Six Weeks after : That no Water could go into the *Thorax* 'till the Lungs be putrified, and that there was not a greater Quantity of Water necessary to drown a Man, than would hinder Respiration.

Mr. *William Comper* appeared.

He declared, He was a Stranger to Mr. *Comper*, the Prisoner, though of the same Name : He said, that in this Case, it was not to be expected that any more than Froth would issue out of the Mouth of the Deceased ; but had she been thrown into the Water and made her utmost Efforts to have sav'd herself, and been often buoy'd up to the Top of the Water, she would have swallowed a considerable Quantity before she had been drowned ; and if her Head had been inclin'd downwards, it might have been expected to flow from her, but when the Head of an Animal was under Water, the first time it was oblig'd to inspire (or draw in the Air) the Water would necessarily flow into its Lungs, and that the Dimension of the Wind-Pipe and its Branches, not amounting to Three Inches square, would not contain above Three Ounces of Water, and consequently a greater Quantity

Quantity was not necessary to choak a Person: That he had caused Three Dogs to be drowned, and there was not more than Three Ounces of Water in their Lungs, and none in their Stomachs; and that it was ridiculous to expect Water in the Cavity of the *Thorax*, unless the Lungs had suffer'd some Appostumation.

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Cowper. I think it a proper time to observe, That though the King's Witnesses say they believe she was not drowned, they have not pretended to say, how she died otherwise.

Bar. Hatsel. That's very true.

Dr. Crell appeared.

He said that *Ambrose Parrey*, chief Surgeon to *Francis I.* was of Opinion, That the certain Sign of a Man's being drowned was, an Appearance of Froth about his Nostrils and Mouth.

Mr. Harriot appeared.

He deposed, That when he was a Surgeon in the Fleet he observ'd, when they threw Men over-board that were kill'd, some of them swam, and some sunk.

Bar. Hatsel. When a dead Body is thrown over-board, Does it sink or swim?

Harriot. I always observ'd they sunk when we were in the Channel.

Mr. Bartlet appeared.

He deposed, He had been in several Engagements, and never saw any of them swim upon the Surface of the Water.

Dr. Camlin appeared.

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He depos'd, That the Coroner desir'd *Mr. Dimsdale* and himself to take Notice of the Marks upon the Neck and Breast of the Deceased, and that they view'd the Body, and perceiv'd a Mark under her Left Ear, and a Settlement of Blood upon her Breast, and another upon her Arm; and when they returned the Jury, *Mr. Dimsdale* spoke for them both and said, it was a Stagnation that did commonly happen to drowned people; and that was also the Deponent's Opinion.— That the Deponent was also present, when a Child of Eleven or Twelve Years old, who was drowned near the same Place, a little time after, was taken up, and there were greater Signs of the Stagnati-

on of Blood on the Body of this Child than on the Body of Mrs. *Stout*; the Child's Face was black and discoloured.

Comper. I shall now give an Account of this Gentlewoman's Melancholly.

Mr. Bowd was call'd.

Mr. *Comper*
calls Witnesses,
to shew that
Mrs. *Stout*
was melan-
cholly.

He depos'd, That about *February* last, being about to go to *London*, the Deceased sent for him, and desired him to do some Business for her there; and when he return'd he went to wait on her, and observ'd she was melancholly, and told her of it, and she answered, he had heard something or other in *London*; then he told her he believed she was in Love, and she took him by the Hand and said, she must confess it, and that she did think she should never be guilty of such Folly: And when he told her, she had enough to make her and the Man happy, she reply'd, it could not be, and the World should never say that she changed her Religion for a Husband; that a little after she bought a Gown of him, but said, she believed she should never live to wear it: That asking her why she did not come to his House oftner, she said, she had left off all Company, and apply'd her self to Reading.

Mr. Firmin appeared.

He said, About Three Quarters of a Year ago he perceived the Deceased to be melancholly, and told her so.

Mrs. Bendy appeared.

She deposed, That asking the Deceased how she did, she answered, She was pretty well in Health, but so troubled with Melancholly she knew not what to do with her self; and she had rather have chosen Sickness than such a Disorder of Mind.

Mrs. Low appeared.

She deposed, That Mrs. *Stout* often complained to her that she was melancholly; and when the Deponent told her she was in Love, she confess'd she was, but said, 'twas with a Person she could never marry: That about *Whitsun* Week the Deponent saw her often, and she said she would take her full swing of Melancholly when her Mother was gone; and she us'd to lie a Bed that Week: That

That the Deceased had an intermitting Feaver, which she told the Deponent was occasioned by Melancholly; and when she advis'd her to Dr. Eales, the Deceased reply'd, that her Distemper was in her Mind and not in her Body, and she would take nothing, the sooner it kill'd her the better; and she said nothing delighted her now, neither Reading nor any thing else.

Mr. *William Cowper's* Wife appeared.

She deposed, That Spring was Twelve Month the Deceased came to *London*, and she saw her once or twice a Week, and she perceiv'd she was melancholly, and the Deceased told her something lay upon her Spirits she should never outlive; and that she should never be well while she was in this World: That this time Twelve Month, at the Summer Assizes, Mrs. *Stout* was much troubled at one *Theophilus*, a Water-man, who was a Quaker, and us'd to come down to her Mothers, and preach and abuse her; that she said she had thoughts of never seeing any body again, she was asham'd to show her Head: That the same Week the Deceased had a Feaver, and said she neglected her Health, and hop'd it would carry her off; and often wish'd her self dead: That the last time the Deponent saw her, was at her Sister's Lodgings, and she was in a great Toss, and her Sister said, for God's Sake keep such Thoughts out of your Head as you have had, and don't talk no more of throwing your self out of the Window; and the Deceased answered, I may thank God I ever saw your Face, otherwise I had done it; but I can't promise I shall not do it.

Mrs. *Toler* appeared.

She deposed, That the Deceased looking very melancholly, she ask'd her what was the matter, and the Deceased answered, something had vex'd her that Day, and she would drown her self out of the Way: And that this was about a Quarter of a Year ago.

Mrs. *Elizabeth Toler* depos'd, That asking the Deceased why she was not so merry as she us'd to be, and why she did not come often to see her, the Deceased answered, she did not go abroad to

much as she us'd to do, and it would be as much a Rarity to see her abroad, as to see the Sun shine by Night.

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Mrs. *Grub* deposed, That she heard her say, if she liv'd 'till Winter was over, she would go over Sea, as far as she could for the Land.

Joseph Taylor appeared.

He deposed, That the *Saturday* before the last Assizes, the Deceased was sitting in Mr. *Firmin's* Shop, and the Deponent said to her, Madam, I think you look strangely discontented, I never saw you dress'd so in my Life; and the Deceased answered, the Dress will serve me as long as I shall have Occasion for a Dress.

Comper. What Part of her Dress did you find Fault with?

Taylor. Her Headcloaths: I thought her Head was daub'd with Grease or Charcoal.

Comper. Was you at Mr. *Barefoot's* when I came in that Morning, and what did I say to Mr. *Barefoot*?

Taylor. You ask'd if they had receiv'd a Letter from your Brother, and they said no; then you said, I will take up this Lodging for mine, and accordingly you went up Stairs, and sent to the Coffee-house for your Things; and Mrs. *Sarah Stout's* Maid came to invite you to Dinner.

Bar. Hatsel. Did Mr. *Comper* use to lie at Mr. *Barefoot's*?

Taylor. I don't know, but he said then, it was all one, his Brother must pay for it, and therefore he would take it himself.

Comper. My Lord, my Wife lodging at *Hertford*, Mrs. *Stout* became acquainted with her, and I was there in the long Vacation, pretty much, and Mr. *Marshal* came down to visit me; and Mr. *Marshal* meeting Mrs. *Stout* often at our Lodgings, made his Addresses to her, and seem'd to be well receiv'd; but as Mr. *Marshal*, one Mrs. *Crook*, Mrs. *Stout* and my self were walking one Evening, and Mr. *Marshal* and Mrs. *Crook* were gone before, Mrs. *Stout* took this Opportunity of speaking to me, in such Terms as surpriz'd me, and said, she did not think I had been so dull; I was

was inquisitive to know in what my Dullness did consist; says she, Do you think I intend to marry Mr. *Marshal*? I said, I thought she did: No says she, I thought it might serve to divert the Censure of the World, and favour our Acquaintance.

Mr. *Marshal* appear'd.

He depose'd, That coming down to *Hertford* to visit Mr. *Cowper*, he became acquainted with Mrs. *Stout*, and by the frequent Opportunities she gave him, of improving that Acquaintance, he had no Reason to suspect the Use, it seems, he was design'd for; that then he did not dream of Court-ing Mrs. *Stout*, though afterwards indeed, understanding what her Fortune was, he did make his Applications to her; but, upon a very little Tryal of that sort, he receiv'd a very fair Denial: That during all his Acquaintance with her, he never, 'till then, found her averse to any Proposal of his; but she then telling him her Resolution he took her at her Word; having, partly by his own Observation, but more by Mr. *Cowper's* Friendship, been pretty well able to guess at her Meaning; and that this was about a Year and a half since.

Mr. *Marshal's*
Evidence of
the Courtship
between him
and Mrs.
Stout.

[Here Mr. *Marshal* produc'd a Letter of Mrs. *Stout's* to him.]

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The Lettter was dated the 26th of *September*, 1697, and was in answer to one of Mr. *Marshal's*; she tells Mr. *Marshal*, she did not apprehend his meaning in some things, that she could not tell when she should come to *London*, thanks him for the Songs he sent her, and his good Wishes; and subscribes her self his *Loving Duck*.

Mr. *Marshal* produc'd another Letter from her, when she was in *London*, wherein she excuses her not meeting him according to Appointment, and tells him she could not see him while she was in *Town*.

Mr. *Cowper* then produc'd a Letter that Mrs. *Stout* sent him, dated the 5th of *March*, wherein she tells him, she is glad he has not forgot there is such a Person in being, that she was willing to shut her Eyes, and not see any thing that look'd like Un-

Mr. *Cowper*
produces Mrs.
Stout's Let-
ters to him.

kindness, &c. That the Winter had been too unpleasant for her to desire a Continuance of it; and she wish'd he might endure for one Hour, what she had felt for many long Nights and Days, and she believ'd it would move that rocky Heart of his; when he came to *H.* she desir'd his Steed might guide him, and he would not do as he did the last time; and he should be heartily welcome, &c.

This Letter was directed to Mrs. *Jane Ellen*, at *Hargrave's* Coffee-house, to avoid Suspicion.

Mr. *Cowper* produc'd another Letter from Mrs. *Stout*, dated the 9th of *March*, in these Words,

S I R,

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I Wrote to you by Sundays Post, which I hope you have receiv'd; however, as a Confirmation, I will assure you, I know of no Inconveniency that can attend your cohabiting with me, unless the Grand Jury should thereupon find a Bill against us; but I won't fly for it, for, come Life, come Death, I am resolv'd never to desert you; therefore, according to your Appointment I will expect you, and 'till then I shall only tell you, that I am

Yours, &c.

This also was directed to Mrs. *Jane Ellen*.

Mr. *William Cowper*, the Prisoner's Brother, appeared.

Mr. *William Cowper's* Evidence of Mrs. *Stout's* Passion for his Brother.

He deposed, that at *London*, about a Year and half since, his Brother *Spencer* came to him one Morning and told him, Mrs. *Stout* design'd him a Visit at his Chambers in the Afternoon, but said, she would dine that Day at his Fathers in *Hatton Garden*, and he desir'd the Deponent to take an Occasion, at Dinner, to say he was to go to *Deptford* that Afternoon, about Business, that she might thereby take the hint of his not being at home, and so save her self the Disappointment of coming to his Chamber: That accordingly, the Deponent meeting Mrs. *Stout* at Dinner at his Fathers, did take Occasion to mention his Brothers going to *Deptford* that afternoon; that presently he observ'd

ferv'd Mrs. *Stout* change Colour, rise up from the Table, and go into the Yard, and there she fell into a Woman's Fit of swooning.

That the *Friday* before the last Assizes his Brother *Spencer* told him, he had receiv'd a very importunate Letter from Mrs. *Stout*, inviting him to lie there at the Assizes, and show'd it him, and told him he should be loth to be at the Expence of another Lodging, if the Deponent would write to Mrs. *Barefoot* and discharge those he had taken there; that he did indeed undertake to write to Mr. *Barefoot*, but it being very late when he should have wrote, and upon Second Thoughts, thinking it would be better for his Brother's Business to be at Mr. *Barefoot's*, which was near the Court, and in the Market Place, he did neglect writing; and that his Brother could know nothing of this before he came to *Hertford*, for he did not see him afterwards.

Then the Letters were prov'd to be Mrs. *Sarah Stout's* Hand by Three Witnesses, and they were shown to her Brother and her Mother, and they acknowledg'd they were like her Hand, but said it must be counterfeited, for she would never have written such Letters; they did not suit her Character.

Mrs. *Barefoot* call'd.

She deposed, That she expected the *Comper's* to lie at her House, because she had heard nothing from them, that she told the Prisoner so, and he sent for his Things to her House, and lay there the first Night of the Assizes, and he came into his Lodgings a little after Eleven, by the Town Clock, and did not go out again.

Mary *Hanwel*, *Barefoot's* Maid, appear'd.

She deposed, That Mr. *Comper* came in a little after Eleven, that she warm'd his Bed, and he desir'd another Blanket, and she went down for it, and all this took up a considerable time, and yet Mr. *Comper* was in Bed before Twelve a Clock.

Mr. *Comper* said, As to what Mrs. *Stout's* Maid Mr. *Comper's* had deposed, that he did not contradict her when Reasons why her Mistress bid her warm the Bed, his Lordship he did not lie
obler- at Mrs. *Stout's*

observed the Words in the last Letter, *Come Life come Death, I am resolv'd, &c.* from whence it might be gathered what the Dispute was between them at that time, and that it was not necessary the Maid should be there at such a Debate, and therefore he might not interrupt her Mistress in the Orders she gave: But as soon as she was gone, he told Mrs. *Stout* by what Accident he was oblig'd to lodge at Mr. *Barefoot's*, and that the Family sat up for him, and his staying at her House under these Circumstances, would probably provoke the Censure of the Town and Country; and therefore he could not stay, whatever his Inclination otherwise might be: But his Reasons not prevailing, he was forc'd to deside the Controversy by going to his Lodging.

And because it was said the Clocks differ'd half an Hour, he would call Witnesses to shew, he was at other Places before he went to his Lodging.

E. Spurr appeared.

He calls Witnesses to shew
whither he
went when he
left Mrs.
Stout's.

He deposed, That Mr. *Cowper* came into the *Glove* and *Dolphin*, that Night, just after the Clock struck Eleven, and staid there about a Quarter of an Hour, and that from Mrs. *Stout's* to the *Glove* and *Dolphin* is a Quarter of a Mile.

Then the Prisoner call'd Witnesses to shew, that to go from Mrs. *Stout's* House to the Place where she was drowned, and to return from thence to the *Glove* and *Dolphin*, would take up at least half an Hour. And,

Sir *William Ashurst*, Mr. *Thompson*, and Sir *Thomas Lane* depos'd, That they walk'd over the Ground abovementioned, as fast as Men usually walk, and it took up above half an Hour.

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Then *Mary Ringatt* depos'd, That Mr. *Cowper* came into the *Glove* and *Dolphin* Inn, just as the Clock struck Eleven, and paid a little Score he had there for his Horse standing; and she remember'd there was some Dispute between the Hostler and him about it.

George Man also depos'd, Mr. *Cowper* came into the *Glove* and *Dolphin*, and staid there about a Quarter of an Hour that Night.

Mrs.

Mrs. *Mince* appeared.

Cowper. What have you heard Mrs. *Stout's* Maid say of her Mistress's being out all Night?

Mince. The Maid has said, her Mistress would sometimes make her Mother believe she went to Bed, and would go out afterwards and take the Key with her: And sometimes she would go out at the Window; and particularly one time, she went out at the Garden Window, and bid her not sit up for her.

Bar. *Hatsel.* Did ever *Sarah Walker* tell you her Mistress staid out all Night.

Mince. She has said, she could not tell what time she came in, for she went to Bed.

Cowper. Now my Lord, I will prove that *Gurry* said, if I had visited Mrs. *Stout* none of all this had been, (upon so little an Omission, it seems, did all this Prosecution depend) But, for me officiously, to have made a Visit at the Time of the Assizes, when I was engag'd in Business, and upon so melancholly an Occasion, and to a Woman I never had the least Knowledge of, might have been thought more strange than my Omission of that Ceremony.

Bar. *Hatsel.* He is not the Prosecutor, I think it is not material what he said.

Then Mr. Cowper call'd some Witnesses as to his Character.

Mr. Cowper
calls Witnesses
to his Character.

Sir *William Ashurst* depos'd, That he always thought Mr. Cowper a Gentleman of singular Humanity, and that no Man had a better Reputation in the Office he held in the City, or in the Place where he liv'd.

Sir *Thomas Lane* said, He was a Gentleman very deserving, and the last Man he should suspect being guilty of such a barbarous Action.

Mr. *Cox* depos'd, That he had liv'd by Mr. Cowper Seven or Eight Years in *Southwark*, and knew him to be a Man of Integrity and Worth, and all the Neighbourhood courted his Company; and he believ'd nothing could move him to entertain the least Thought of so foul a Fact.

Mr. *Thomson* depos'd, That no Man was more faithful in the Service of his Client, or deserv'd more

more Esteem; and believ'd, he never entertained a Thought of so barbarous a Fact.

Bar. *Hatsel*. You have heard the Evidence against you, Mr. *Marson*; What do you say to it?

Marson enters upon his Defence.

Marson. My Lord, Our Business at *Hertford* was this: Mr. *Ellis Stevens*, is Clerk of the Papers of the *King's-Bench*, and Mr. *Rogers*, is Steward of the *King's-Bench*; and it was their Duty to wait upon the Lord Chief Justice out of Town. And I went with them as far as *Kingsland*, but being an Attorney of the *Borough-Court*, I was forc'd to return, and attend that Court 'till past Four in the Afternoon; and then I set out for *Hertford*. I shall call Witnesses to prove this, and shew where I spent my Evening at *Hertford*. And as to our Discourse of Mrs. *Stout*; in joecular Conversation, I believe Mr. *Stevens* might ask Mr. *Gurry*, if he knew one Mrs. *Sarah Stout*, and what sort of Woman she was; and possibly I might say, *My Friend may be in with her*; which our Witnesses will explain. And, I confess, Mr. *Rogers* ask'd me, What Money I had got that Day at the *Borough-Court*; and I answer'd, Fifty Shillings. Saith he, We have been here spending our Money; I think you ought to treat us, or to that effect: But as to the Bundle they mention, I had only a pair of Sleeves and a Neckcloth. The Witnesses have wrested and improv'd our Words, and every Circumstance; or wholly forg'd them out of their own Heads.

Bar. *Hatsel*. What say you to it, Mr. *Rogers*?

Rogers's Defence.

Rogers. We came down with the Marshal of the *King's-Bench*; and it raining all Day, we did not expect Mr. *Marson* would have come, and so took but one Lodging. We were at the Coffee-House at *Hertford*, when he came; and from thence we went to the Tavern, and then to our Lodging; and there was some merry and open Discourse of this Gentlewoman; but I never saw her in my Life.

Stevens's Defence.

Stevens. We went along with the Marshal of the *King's-Bench*, to accompany my Lord Chief Justice out of Town, as is usual; and never stirr'd from one another.

Bar.

Bar. *Hatsel*. Did not you talk of her Courting Days being over?

Prisoners. Not one Word of it: We absolutely deny it.

Mr. *Hunt* call'd.

He depos'd, That the *Sunday* Night before *Hertford* Assizes, he happen'd to be in Company with Mr. *Marson*, and three or four more of *Clifford's* Inn, at the *Devil* Tavern by *Temple-Bar*; and there being a Discourse of the Marshal of the *King's-Bench* attending the Lord Chief Justice out of Town, to *Hertford*; Mr. *Marson* said, *It may be the Marshal may require my waiting upon him*. And that there being a Discourse of Mr. *Marshall's* courting Mrs. *Stout*; one of the Company said, *If you do go to Hertford, pray enquire after Mr. Marshall's Mistress, and bring us an Account of her?*

They call the Witnesses to show how they came to talk of Mrs. *Stout* at *Gurrey's*.

Marson. It was this Discourse, that gave us occasion to talk of this Woman at *Gurrey's* House; which we did openly and harmlessly.

Mr. *Fisher* call'd.

He depos'd, That he was also in Company the *Sunday* Night, when the Discourse was of Mr. *Marshall* and Mrs. *Stout*: And that Mr. *Marson* or *Stevens*, said, They would do their endeavour, and inquire after the Lady; and give as good an Account of her, as they could.

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Mr. *Hanks*, a Clergyman, call'd.

He depos'd, That he waited on the Lord Chief Justice out of Town, as far as *Waltham-Cross*, and staid there 'till about Four or Five a Clock; and was returning to *London*: But meeting Mr. *Marson*, upon his importunity, he went with him to *Hertford*; where they came about Seven or Eight at Night; and went to the Coffee-House, where they found the Marshal of the *King's-Bench*, &c. From thence, they went with Mr. *Rogers* and *Stevens*, and one Mr. *Rutkin*, to the *Glove* and *Dolphin*, where they staid 'till about Eleven; and then the Deponent, and Mr. *Rutkin*, saw Mr. *Marson*, Mr. *Rogers*, and Mr. *Stevens*, to their Lodgings. And the Deponent was never out of Mr. *Marson's* Company that Evening.

Bar.

Bar. *Hatsel*. What time did you come into the Tavern?

Mr. *Hanks*. Between Seven and Eight; we rid very hard.

Mr. *Rutkin* call'd.

He depos'd, That he waited on the Lord Chief Justice to *Hertford*; and that about Seven or Eight, Mr. *Marson* and Dr. *Hanks* came thither; and they agreed to go together to the *Dolphin* and *Glove*, to drink a Glass of Wine; and they staid there 'till past Ten. And then the Deponent, and Mr. *Hanks*, went with Mr. *Marson*, *Rogers* and *Stevens*, to their Lodgings, but did not go in: The Deponent being to lie with the Marshal, and thinking the Marshal would stay for him.

Mr. *Jones*. What time did the Gentlemen go to their Lodging?

Rutkin. I am not positive, but, I believe, about Eleven a Clock.

Then Mr. *Marson*, *Rogers* and *Stevens*, call'd several Witnesses to their Reputation; who depos'd, that they were Men of Substance, in good Business, and had very fair Characters.

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Mr. *Jones*. Mr. *Comper* gives a very different Evidence now, from what he gave before the Coroner. There he said, he never knew any Distraction or Love Fit; or other Occasion she had, to put her upon such an extravagant Action: And now he would have the whole Scheme, turn upon a Love Fit.

John Mason Sworn.

He depos'd, That when Mr. *Comper* was examin'd before the Coroner, upon Oath, he said, he did not know any Thing should be the Cause of it; but she was a very modest Woman.

Mr. *Jones*. Did they ask him if he knew any Person she was in Love with?

Mason. He said he knew but one, and his Name was *Marshal*: And Mr. *Marshal* told him, that he was always repuls'd by her.

J. Archer Sworn.

He depos'd, That Mr. *Comper* was ask'd, If he knew any Occasion of Mrs. *Stout*'s Death; and he said, he knew nothing of it, or of any Letters.

Bar.

Bar. *Hatsel*. Did they ask him, if he knew of any Letters?

J. *Archer*. I don't remember that.

Mr. *Stout*. I would call some Witnesses to my Sister's Reputation.

Bar. *Hatsel*. I believe no body disputes that; she might be a Virtuous Woman, though her Brains might be turn'd by her Passion, or some Distemper.

Mr. Baron *Hatsel* having summ'd up the Evidence, said, He was very much puzzled in his Thoughts, to find out what Inducement, Mr. *Cowper*, or those Three Gentlemen could have, to commit such a barbarous Murder. And on the other Hand, He could not imagine what could induce this Gentlewoman, a Person of a plentiful Fortune, and a very sober and good Reputation, to destroy herself. That the Letters, if they were hers, did seem to fortify all that Mr. *Cowper's* Witnesses had said, concerning her being Melancholy: And it might be a Love Distraction, and she a Virtuous Woman nevertheless. And, no wonder, when her Distemper had turn'd her Brains, and discompos'd her Mind, that she should write after a Manner, different from the other Actions of her Life. That the Discourse of the Three Gentlemen at their Lodging, that Night, concerning Mrs. *Sarah Stout*, was very odd; saying, *Her Business was done, and her Courting Days were at an end, &c.* That these were strange Expressions, he knew not what to make of them: And left it to the Jury to consider, Whether they were spoken in Jest or Earnest.

Then the Jury withdrew, and about half an Hour after return'd with their Verdict; that Mr. *Cowper* was *Not Guilty*. In like manner they gave their Verdict, That *John Marson, Ellis Stevens, and William Rogers, were Not Guilty*.

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The

*The Tryal of MARY BUTLER, alias
STRICKLAND, for Forgery; at the
Old-Bailey, London; the 12th of Octo-
ber, 11 W. III. 1699.*

The Indict-
ment for for-
ging a Bond
from Sir Ro-
bert Clayton
to herself, for
the payment
of 20000 l.

“ **T**HE Indictment sets forth, That the said
“ *Mary Butler*, maliciously intending to de-
“ ceive and oppress Sir Robert Clayton, Knt. and
“ Alderman; Did, on the 1st Day of *December*,
“ in the 7th Year of the King, cause a certain false
“ Writing to be made, in Form of a Bond to her,
“ of the penal Sum of 40000 l. for the payment
“ of the Sum of 20000 l. by the Executors of the
“ said Sir Robert Clayton, within six Months after
“ his Death. And for the payment of the Interest
“ of the said Money, by the said Sir Robert Clay-
“ ton, in the mean time. And that she, knowing
“ the said Writing to be false and forg’d, subtilly
“ and deceitfully, did publish the same. To the
“ great Damage of the said Sir Robert Clayton, the
“ evil Example of others, &c.

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Mrs. Butler
kept by the
Duke of Buck-
ingham.

To which Indictment she pleaded *Not Guilty*.
And the Jury being sworn, Mr. *Montague* open’d
the Indictment, and Mr. Serjeant *Wright* open’d
the Evidence, and took occasion to shew; That
Mrs. Butler was very intimate with the late Duke
of *Buckingham*; and either had, or pretended to
have, a Bond from the said Duke, for the payment
of 5000 l. to herself, after his Death; and an an-
nual Interest, ’till the Principal should be paid.
That Sir Robert Clayton being a Trustee of the
Duke’s Estate, for the payment of his Debts, Mrs.
Butler came frequently to Sir Robert Clayton’s, to
sollicit his Favour and Interest for the payment of
this Debt; and so insinuated herself into him, and
his Family: And pretended much Penitence for
her Commerce with the Duke. But Sir Robert find-
ing she was an ill Woman, notwithstanding all her
Pretences, about Twelve Years since, forbid her
his

his House. And in the Year 1695, he had some Notice of the Practices mentioned in the Indictment.

Mr. Woodward Sworn.

He depos'd, That *Mrs. Butler* had been his Client many Years; and about three Years since, she brought him a Bond, sign'd *Robert Clayton*, and attested by four Witnesses. That it was dated in the Year 1687, and of the Penalty of 40000 *l.* and condition'd for the Payment 1200 *l.* yearly, by quarterly Payments, during *Sir Rob. Clayton's* Life; and 20000 *l.* six Months after *Sir Robert's* Death. That she told the Deponent the 40000 *l.* Bond was to be deliver'd up, because the Thing had taken Air, and given my Lady *Clayton* some disquiet: And for my Lady's Satisfaction, a Bill in Chancery was to be exhibited. And she (*Mrs. Butler*) was to disclaim any Bond or Interest, or any pretence she had upon *Sir Robert Clayton*. And that *Sir Robert Clayton* would, thereupon, give her a new Bond; and add the Interest that was in Arrear, upon the old Bond. And therefore, she desir'd the Deponent to compute the Interest, and draw another Bond of the Tenor of the old One. And accordingly, having cast up the Interest, which amounted to 7000 *l.* He made a Bond, of the Penalty of 54000 *l.* for Payment of 27000 *l.* after *Sir Robert's* Death; and the Interest, in the mean time, to be paid by proportionable quarterly Payments. That when the Deponent had drawn the Bond, he told *Mrs. Butler* it was a very great Sum, and it concern'd her to have Witnesses of Credit: For no body would believe *Sir Robert Clayton* did give her this Bond, after his Death, unless it was well attested; and offer'd himself to be a Witness. But she told him, *Sir Robert* did not care he should: And she took both the Bonds away. That the Deponent had first made a Copy of the 40000 *l.* Bond, which he exhibited and attested to be a true Copy in Court.

[Here the Copy of the 40000 *l.* Bond was read.]

Page 446.
Evidence of
her producing
the abovesaid
Bond, and gi-
ving Instru-
ctions for
drawing ano-
ther Bond
from *Sir Ro-
bert*, for the
payment of
27000 *l.*

Page 447.

Serj.

Serj. *Wright*. Did she bring you the Bond, of which this is a Copy, as a true Bond?

Woodward. Yes.

Serj. *Wright*. Had you a Charge from her, to keep this Matter secret?

Woodward. Yes; and that I would write the Bond with my own Hand.

Serj. *Wright*. How came this Matter to be known then?

Woodward. Mr. *Nicholas Baker* came to me, and told me Sir *Robert Clayton* had information that there was such a Bond drawn by me. I told him there was such a Bond brought to me, and that I made a Bond for Mrs. *Butler*; and had taken a Copy of the first Bond, which I had by me.

Mr. *Hall*. Was it Seal'd or Cancell'd?

Woodward. It was seal'd, I am very positive; and the Seal was then on.

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Mr. *Baker* Sworn.

He depos'd, That Mr. *Woodward* produc'd this Copy of the 40000 *l.* Bond, before my Lord Chief Justice *Holt*, at his Chamber. And Mrs. *Butler* own'd, she order'd Mr. *Lewkar*, a Scrivener in *Bishopsgate street*, to make the Bond, of which that was a Copy; and to set Sir *Robert Clayton's* Name to it, and the Witnesses Names to it.

The Defence
made by Mrs.
Butler's Coun-
cil.

Mr. *Mallet*. The Bond of 54000 *l.* is not in the Indictment; and it is several Years since this of 40000 *l.* was shewn Mr. *Woodward*; and it's strange he should be so very exact, when, he says, he did not examine it. And, possibly, he might mistake in Copying it; and it may not be the very Bond in the Indictment. Now we have a Bond of 5000 *l.* from the Duke of *Buckingham*, and are suing Sir *Robert Clayton* for the Money. And now, when we are like to have a Decree for this Sum, against this Trustee of the Duke of *Buckingham's* Estate; he would, under pretence of a Bond that we disclaim'd, when he preferr'd his Bill against us, take off our Credit in this Matter.

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Here Mrs. *Butler* call'd two or three Witnesses to her Reputation, (*Obscure People*) who said little more, than that they knew no Harm by her.

L. C. J.

L. C. J. Holt, Mrs. Butler, Will you say any Thing for your Self?

Mrs. Butler. I am altogether Innocent; I never wrong'd Sir Robert Clayton, nor any body else, in my Life,

Then the Chief Justice having summ'd up the Evidence, the Jury withdrew; and on their return, brought Mrs. Butler in Guilty. Page 450.
She is Con-
victed.

And the Court adjudg'd, That Mrs. Butler should pay a Fine of 500 l. to the King, and remain in Prison 'till she paid it. The Judg-
ment against
her.

The Tryal of Captain WILLIAM KIDD, for Murder and PyracY, upon Six several Indictments. As also, the Tryals of NICHOLAS CHURCHILL, JAMES HOW, ROBERT LAMLEY, WILLIAM JENKINS, GABRIEL LOFF, HUGH PARROT, RICHARD BARLICORN, ABEL OWENS, and DARBY MULLINS, for PyracY; at the Admiralty Sessions held at the Old-Bailey, the 8th and 9th of May, 13 W. III. 1701. Page 451.

THE first Indictment against *William Kidd*, was for Murder, and sets forth; " That the
" said *William Kidd*, not having the Fear of God
" before his Eyes, &c. the 30th of October, in
" the 9th Year of the King, by Force and Arms,
" upon the High Sea, near the Coast of Mala-
" bar, in the *East-Indies*, and within the Jurisdi-
" ction of the Admiralty of *England*; in a cer-
" tain Ship, call'd the *Adventure Galley*, whereof
" the said *William Kidd* was then Commander;
" did, of his Malice aforethought, then, and there,
" make an Assault, in and upon one *William*
" *Moor*, then belonging to the said *Adventure*
" *Galley*: And the said *William Kidd*, with a cer-
" tain wooden Bucket, bound with Iron Hoops,
Vol. IV. Part I. M m did

Page 453.
The first In-
dictment a-
gainst *Kidd*,
for murdering
William Moor
his Gunner,

“ did feloniously, and of his Malice aforethought,
 “ beat, and strike, the said *William Moor*, upon
 “ the Right part of his Head, a little above the
 “ Right Ear; giving him thereby, one Mortal
 “ Bruise: Of which Mortal Bruise, the said *Wil-*
 “ *liam Moor* languish’d from the said 30th of *Octo-*
 “ *ber*, until the 31st, and then died. And so the
 “ said *William Kidd*, feloniously, voluntarily, and
 “ of his Malice aforethought, did Kill and Mur-
 “ der the said *William Moor* upon the High Sea,
 “ within the Jurisdiction of the Admiralty afore-
 “ said. Against the King’s Peace, his Crown and
 “ Dignity, &c.

To which Indictment, the said *William Kidd*
 pleaded *Not Guilty*: And desir’d Dr. *Oldish*, and
 Mr. *Lemmon*, might be assign’d his Counsel.

Just. *Powel*. They may be of Council for him,
 if he has any Matter of Law to plead.

Dr. *Oldish*. My Lord, He moves, that his Try-
 al for Piracy may be put off; for that one *Davis*,
 who was a Passenger in the Ship, and a material
 Witness for him, now stands Indicted: So that he
 is depriv’d of his Evidence.

Mr. *Coniers*. He is not Indicted? He may call
 him if he thinks fit.

Just. *Powel*. If he be Indicted, he may be a
 Witness.

Dr. *Oldish*. He desires also, that his Tryal may
 be delay’d, because he is charg’d with Piracy, for
 taking some Ships that had *French Passes*. Now,
 if they had *French Passes*, it was a lawful Seizure;
 and this Pass, my Lord *Bellamont* took from him;
 as may be prov’d by a Letter, which he cannot at
 present come at. We desire that *Davis* may be
 brought into Court, who can make this Matter
 out.

Sol. *Gen*. They have had a Fortnights Notice of
 Tryal.

Dr. *Oldish*. We petition’d for Money, and the
 Court order’d 50 *l*. but we had none of it ’till last
 Night.

Kidd.

Kidd. I had no Money, or Friends permitted to come to me, 'till last Night.

Sol. Gen. My Lord, Let him be try'd for the Murder; wherein, there is no pretence of want of Witnessees or Papers.

Then the Pannel was call'd over, and Captain *Kidd* making no Challenges, a Jury was sworn, and charg'd with him. And the King's Council having open'd the Indictment for the Murder,

His Tryal for the Murder comes on.

Joseph Palmer was Sworn.

He depos'd, That *William Moor* (the Deceased) was Gunner on board Capt. *Kidd's* Ship; and that about a Fortnight before this Murder, they met with a Ship, call'd the *Loyal Captain*, Capt. *Hoare* Commander; and that *Hoare* came on board Captain *Kidd's* Ship, and Captain *Kidd* went on board him. And some of Captain *Kidd's* Men, were for taking Capt. *Hoare*; but *Kidd* himself was against it, and so it was not done.

The Evidence against him.

About a Fortnight after this, *William Moor*, (the Deceased) was grinding a Chisel upon Deck; and Captain *Kidd* came to him, and said; *Which Way could you have put me in a Way to have taken this Ship, and been clear?* To which *Moor* reply'd, *I never said such a Thing, nor thought such a Thing.* Upon which, Captain *Kidd* call'd him a *Lowsy Dog*. Says *Moor*, *If I am a Lowsy Dog, you have made me so: You have brought me to ruin, and many more.* Captain *Kidd* reply'd, *Have I ruin'd you, you Dog?* And having walk'd two or three Turns, backward and forward, upon the Deck; Captain *Kidd* took up a Bucket, bound with Iron Hoops, and struck *Moor* on the Right Side of the Head. And as *Moor* was carried down into the Gun-Room, he said, *Farewel! Farewel!* Captain *Kidd* has given me my last. And Captain *Kidd* stood on the Deck, and said, *You are a Villain:* And *Moor* died the next Day, of the Blow. That,

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After he was dead, the Chirurgeon, was call'd to open his Head; and Captain *Kidd* said, *You are damn'd buisy without Orders.*

Mr. Comper. How did his Head appear? Was he bloody?

Palmer. There was not much Blood came from him.

L. C. J. Ward. Was Moor in good Health before this Blow?

Palmer. Yes, my Lord; and after the Blow was struck, he complained.

Mr. Comper. And you saw him when he was dead?

Palmer. Yes; And I felt of his Head, and in one place I could feel the Skull give way; and about the Wound, there was a Bruise.

Sol. Gen. Do you know of any other Provocation Capt. Kidd had, to strike Moor, besides those Words?

Palmer. I know of no other Provocation.

Robert Braddinham, Surgeon of Kidd's Ship,
Sworn.

He depos'd, That he was sent for to Moor, the Gunner, after Captain Kidd had given him the Blow. And asking Moor how he did, he answer'd, He was a dead Man; Captain Kidd had given him his last Blow. That the Deponent was also in the hearing of Moor, when he said, Farewel! Farewel! Captain Kidd has given me my last Blow. And Captain Kidd said, Damn him, he is a Villain.

Mr. Comper. How long did he live after the Blow?

Braddinham. He died the next Day: The Wound was but small, but the Skull was fractur'd; and I believe he died of that Wound.

Mr. Comper. Had you any Discourse with Captain Kidd, after this, of this Man's Death?

Braddinham. About two Months after this, on the Coast of Malabar, Captain Kidd said, I do not care so much for the Death of my Gunner, as for other Passages of my Voyage; for I have good Friends in England, that will bring me off of that.

Kidd. Did he know of any Difference between the Gunner and me, before this happened?

Braddinham. I knew of none?

Mr.

Mr. Comper. Mr. Palmer, Was there any Mutiny in the Ship, when this Man was kill'd?

Palmer. There was none.

L. C. B. Ward. What have you to say for your self?

Kidd. I have some Witnesses, but they are Prisoners.

L. C. B. Whatever other Crimes they may be guilty of, they may be Witnesses for him in this Case?

Abel Owens call'd.

Kidd. Can you tell which Way this Bucket was thrown? Kidd calls his Witnesses.

Just. Powel. What was the Provocation for throwing this Bucket?

Owens. I was in the Cook-Room, and hearing some Difference on the Deck, I came out: And the Gunner was grinding a Chisel on the Grindstone; and the Captain and he had some Words. And the Gunner said to the Captain, *You have brought us to Ruin, and we are desolate.* Says the Captain, Have I brought you to Ruin? I have not brought you to Ruin; I have not done an ill Thing to ruin you: You are a sawcy Fellow to give me those Words. And then the Captain took up the Bucket, and gave him the Blow.

Kidd. Was there not a Mutiny among the Men?

Owens. Yes; And the bigger Part were for taking a Dutch Ship we met with. And the Captain said, *You that will take the Dutchman, You are the strongest: You may do what you please; but if you go from on board, you shall never come a-board again.*

L. C. B. When was this Mutiny?

Owens. About a Month before this Accident.

Just. Powel. But did Moor, the Gunner, endeavour to make any Mutiny, when the Blow was given?

Owens. None at all.

Juryman. Did he throw the Bucket, or strike him with it?

M m 3

Owens.

Owens. He took it by the Strap, and struck him with it.

Richard Barlicorn call'd.

He deposed, That several of the Men were for taking the *Dutch Ship*, but that the Captain was against it, and *Moor* was one who was for taking it.

L. C. B. How long was this before *Moor* died.

Barlicorn. I believe, a Month or Three Weeks.

Kidd. Was there not a *Dutch Man* close by us when this Blow was given?

Barlicorn. Yes Sir.

Kidd. He was going to make another Mutiny, but I prevented him.

Bar. Hatsel. Was there any Mutiny about the *Dutch Ship*?

Barlicorn. Not that I know of; but there was about the *Loyal Captain*, some time before; and *William Moor* had lain sicke a long time before the Blow was given; and the Doctor said, the Blow was not the Cause of his Death.

L. C. J. Do you hear *Braddenham*, what he says?

Braddinham. My Lord, I never said so; nor had *Moor* been sick before the Blow.

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Sol. Gen. How long did *Moor* live after the Blow?

Barlicorn. I believe about a Week.

L. C. B. And the other Two Witnessses swear, he dy'd the next Day.

Hugh Parrot call'd.

He depos'd, That the Gunner told Captain *Kidd*, he could have put him in a way to have taken the Ship, and been never the worse for it; and the Captain was in a Passion at *Moor's* saying so, and that was the Occasion of his striking him; but the Deponent did not see the Blow given.

Kidd.

Kidd. I had all the Provocation in the World, but I did not design to kill him: I had no Malice or Spleen against him.

My Lord Chief Baron, in his Directions to the Jury, tells them, "That if one Man kills another, without Provocation, the Law implies Malice, and then such killing was Murder; but where there was a sudden falling out and fighting, and one was kill'd in Heat of Blood, then the Law call'd it but Manslaughter: But such slight Words as these, could never be reasonable Cause to kill him; and if they believ'd them to be no reasonable Provocation, and that the Blow was given by the Prisoner, and that the Blow was the Occasion of *Moor's* Death, he did not see any thing to extenuate the Offence, so as to reduce it to Manslaughter; but that the Prisoner was guilty of Murder: Indeed had there been a Mutiny at that time, the Prisoner might have urg'd it in his Defence as a reasonable Cause; but it appeared that the Mutiny was at least a Fortnight before.

Then the Jury withdrew, and returning about an Hour afterwards, they brought the Prisoner in *Guilty*.

The Chief Baron's Directions to the Jury.

Page 459. Where one kills another, without sufficient Provocation the Law implies Malice.

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Kidd is convicted of the Murder.



The Tryal of WILLIAM KIDD, NICHOLAS CHURCHILL, JAMES HOW, ROBERT LAMLEY, WILLIAM JENKINS, GABRIEL LOFF, HUGH PARROT, RICHARD BARLICORN, ABEL OWENS, and DARBY MULLINS, for Py-racy and Robbery; in taking a Ship called the Quedah Merchant.

The Indictment against Kidd, and the other Prisoners, for Py-racy, in taking the *Quedah Merchant*.

“THE Indictment sets forth, That the Prisoners, the 30th of *Jannary*, in the 9th Year of the King, upon the High Seas, about Ten Leagues from *Cutcheen* in the *East-Indies*, and within the Jurisdiction of the Admiralty of *England*; did pyrattically and feloniously set upon, board, break, and enter a certain Ship called the *Quedah Merchant*; and pyrattically and feloniously did assault the Mariners of the said Ship, and put them in corporeal Fear of their Lives, and did pyrattically and feloniously steal, take, and carry away the said Ship, with the Apparrel and Tackle thereof, of the Value of Four Hundred Pound, Seventy Chests of *Opium*, of the Value of One Thousand, Four Hundred Pound, &c. being the Goods and Chattels of certain Persons to the Jurors unknown: Against the King's Peace, his Crown and Dignity, &c.

To this Indictment, the Prisoners having respectively pleaded *Not Guilty*, a Jury was sworn, and charg'd with them.

How, Churchill, and Mullins said, they surrendered themselves upon the King's Proclamation, and desired they might have the Benefit of it.

Then the Court order'd the Proclamation to be read.

This Proclamation was dated the 8th Day of *December*, 10 W. III. 1698, and did empower *Capt. Thomas Warren*, Commander of a Squadron

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Some of the Prisoners lay hold of a Proclamation offering Pardon to such Pyrates as should surrender.

dron of Men of War sent to the *East-Indies*, to suppress the Pyrates there; *Israel Hayes*, *Peter Delanoy*, and *Christopher Pollard*, Esquires, Commissioners on board the Squadron, to offer Pardon to all such Pyrates as should surrender themselves within the Times therein limited; excepting only, *Henry Avery*, alias *Bridgman*, and *William Kidd*.

Mr. *Moxon*. My Lord, Capt. *Warren* coming to St. *Mary's*, and delivering out these Proclamations, the Prisoners came and acknowledged themselves Pyrates, and surrendered to the Governour.

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L. C. B. *Ward*. The Proclamation says, They must surrender to such Persons by Name, and if they would have the Benefit of the Proclamation, they must shew they have pursued the Directions in it.

Then the following Affidavit was read, viz.

Charles Hally, *Gent.* maketh Oath, That in the Year 98, there being Notice of His Majesties Gracious Pardon, to such Pyrates as should surrender themselves: James Howe, Nicholas Churchill, and Darby Mullins, in may 1699, did surrender themselves to Jeremiah Bass, and he did admit them to Bail.

L. C. B. If you would have the Benefit of this Proclamation, you must bring your selves under the Condition of it; now there are Four Commissioners mentioned that you ought to have surrendered to, but you have not surrendered to any of those, but to Colonel *Bass*; and there is no such Man mentioned in this Proclamation.

Mr. *Moxon*. But my Lord, consider the Nature of this Proclamation, and what was the Design of it; which was to invite Pyrates to come in.

Mr. *Coniers*. We must keep you to the Proclamation, this is not sufficient to put off the Tryal.

Then Mr. *Knap* opened the Indictment, and Dr. *Newton*, Advocate of the Admiralty, open'd the Evidence; and aggravated the Offence: He shew'd that Capt. *Kidd* went from *England* in April, 1696, with a Commission, dated the 26th of Ja-

Dr. *Newton* shews the pernicious Effects of Piracy, and the particular Aggravations of Kidd's Offence

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nuary, preceding, to take, and seize, Pyrates in the *Indian* Seas, which were then very much infested with them: But Capt. *Kidd* was so far from being true to his Trust, and making good the Ends of his Commission, that he had acted with the greatest Treachery and Falseness that ever Man had done.—— He shew'd, That Piracy was the growing Trouble and Disturbance of the trading World, and the peaceable Part of mankind: The Scandal and Reproach of the *European* Nations, and of the Christian Name, and the *Kidds* and the *Averys*, had made it more particularly so of the *English*, amongst *Mahometans* and *Pagans*, in the extremest Parts of the Earth. That Piracy was not only to the Disadvantage of the immediate Sufferers, but that all, who traffick'd in these Countries, suffer'd with them for the Villanies of those whom they, and all mankind, equally and justly detested and abhorr'd. That if the Facts prov'd true, he hop'd the Jury would do Justice to the injured World, and to the *English* Nation in particular; whose Interest and Welfare so much depended on the Encrease and Security of Trade.

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Braddinham, the Surgeon of Capt. *Kidd's* Ship, Sworn.

Braddinham's
Narrative of
of *Kidd's* Voy-
age.

He deposed, That in the beginning of *May* 1696, he sail'd from *Plymouth*, with Capt. *Kidd*, in the *Adventure Galley*, having about Seventy or Eighty Men on board, and Thirty Guns; that they design'd for *New York*, and in their Way met with a *French* Ship and took her; and when they came to *New York*, Capt. *Kidd* put up Articles, that if any Men would enter themselves on board his Ship, they should have their Shares of what was taken, and he himself would have Forty Shares: That there came in so many Men upon this, that they sail'd from *New York* with One Hundred and Fifty Five Men, and came to the *Madera's*, from thence they went to *St. Jago*, then to *Madagascar*, from thence to *Nahala*, and from thence to the *Red Sea*; where they waited for

for the *Moca* Fleet, about a Fortnight or Three Weeks. ——— That Capt. *Kidd* sent his Boat Three times to *Moca*, to see if they could make any Discovery, and the Two first Times they could make none; but at the third time, Word was brought, that the Ships were ready to sail, and accordingly they came, and *Kidd* sail'd after them, and fell in with, and fir'd at them; but finding they were under Convoy, he left them, and steer'd for the Coast of *Malabar*, and by the Way met with Capt. *Parker*, Commander of a *Moorish* Ship that came from *Bombay*; and that Capt. *Kidd* took *Parker* for a Pilot, and a *Portuguese* for an Interpreter: And he took out of the Ship a Bale of Coffee, a Bale of Pepper, and about Twenty Pieces of *Arabian* Gold; and ordered some of the Men to be hoisted up by the Arms, and drubb'd with a naked Cutlace, to make them confess what Money they had.

Mr. *Coniers*. Were those Men *French* Men that were so us'd?

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Braddinham. No, they were *Moors*. [*Indian Mahometans*.]

Mr. *Coniers*. Was there not a Demand made of Capt. *Parker* and the *Portuguese*?

Braddinham. Yes, the *English* Factory sent to demand *Parker* and the *Portuguese*, and *Kidd* denied he had any such Persons on board, for he kept them in the Hold. ——— Then he went to Sea, and that Night made a *Portuguese* Man of War, and the next Morning he came up with her, and the *Portuguese* first fir'd at Capt. *Kidd*, and they fought Four or Five Hours, and Captain *Kidd* had Ten Men wounded, and so they parted; and Capt. *Kidd* went to one of the *Malabar* Islands for Wood and Water, and his Men plunder'd several Boats, and burnt the Houses, and *Kidd* ordered one of the Natives to be tied to a Tree, and one of his Men to shoot him; because some of the Natives had cut his Cooper's Throat.

Mr. *Coniers*. What happened afterwards?

Brad-

Braddinham. Then we cruised on the *Malabar Coast*, and in *October*, 1697, *Kidd* kill'd his Gunner, *William Moor*, and in *November* following he took a *Moorish Ship*, off *Surat*, and there were two *Dutch Men* belong'd to her, the rest were *Moors*; and when the *Dutch Men* perceiv'd Capt. *Kidd* chased them under *French Colours*, they put up *French Colours* too: And Capt. *Kidd* came up with them, and commanded them on board, and he order'd a *French Man* to come upon Deck and pretend himself Captain: Then the *Dutch Men* produc'd a *French Pass*; says, C. *Kidd*, *By God, have I catch'd you! You are free Prize to England*: That he took Two *Horses*, and some *Quilts*, &c. and carried the Ship to *Madagascar*; and in *December*, 1697, they took a *Moorish Ketch*, and they took out of her Thirty *Tubs of Sugar*, a *Bale of Coffee*, &c. and then turn'd her a drift.

In *January*, Capt. *Kidd* took a *Portuguese*, and took out of her some *Chests of Opium* and *East-India Goods*, &c. and kept the Ship about Seven Days; but being chased by Eight Sail of *Dutch*, he left her.

Mr. Coniers. Now give a particular Account of the taking the Ship on which the Indictment is founded.

Evidence of
the taking the
Quedah Mer-
chant.

Braddinham. Some time in *January*, Capt. *Kidd* put up *French Colours*, and gave Chase to the *Quedah Merchant*, and when he came up with her he commanded the Master on board, and there came first an old *French Man*, who was the Gunner: Then *Kidd* sent for the Captain, who was one *Wright*, an *English Man*, and when he was brought on board, *Kidd* told him he was his Prisoner, and ordered his Men to go aboard and take Possession of the Ship; and he dispos'd of the Goods on that Coast, to the Value of Seven or Eight Thousand Pounds.

Mr. Coniers. What Persons were aboard her?

Braddinham. There were Capt. *Wright* and Two *Dutch Men*, and a *French Man*, and some *Armenians*, and the rest *Moors*; and they offer'd
Twenty

Twenty Thousand Rupees for the Ransom of the Ship and Cargo; but Capt. Kidd told them the Cargo was worth a great deal more.

Mr. Coniers. What did Kidd do with the Proceed of the Goods he sold?

Braddinham. He shar'd the Money: All the Men had Shares.

Mr. Coniers. How did Kidd behave himself to the other Ships and Boats upon the Coast?

Braddinham. He boarded several, and took out what was for his Turn.

Mr. Coniers. How did he use those he traded with?

Braddinham. Some of them, as he was coming away, he plundered, and sent them ashore without any Goods: They were Mahometans, and he took from them about Five Hundred Pieces of Eight.

Just. Powel. They are indicted for the *Quedah Merchant*, Were all the Prisoners at the taking of her, and had a Share in the Booty?

Braddinham. They were all at the taking that Ship; and when we came to *Madagascar*, Capt. Kidd ordered the Goods to be carried ashore and shar'd, and he had Forty Shares himself; and every one of the other Prisoners had a Share.

And when we came to *Madagascar* there came off a Canoe to us, with some *English* Men, who were formerly acquainted with Capt. Kidd; and they told him, they heard he was come to take them and hang them.

Mr. Coniers. Who did they come from?

Braddinham. From the *Moco* Frigate, Capt. Culliford Commander, and Capt. Kidd told them he was as bad as they; and afterwards Captain Kidd went on board them, and swore to be true to them and assist them, and he actually assisted Capt. Culliford with Guns and an Anchor, to fit him out to Sea.

Mr. Coniers. What became of the *Adventure Galley* afterwards?

Braddinham. She was leaky, and Capt. Kidd left her and went on board the *Quedah Merchant*.
Kidd.

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Kidd. Did you see any Passes on board the *Quedah Merchant*?

Braddinham. You told me you had *French* Passes, but I never saw them.

Jenkins. Was not I a Servant?

Braddinham. He was Servant to *George Bullen*.

Barlicorn. Was not I the Captain's Servant?

Braddinham. Yes, he was.

Just. Powel. What was the Reason some had whole Shares, and some half Shares?

Braddinham. Some were able Seamen, and some were Landmen or Servants; the Landmen and Servants had but half Shares.

Mr. Comper. You say, he took a *French* Ship going to *New York*, and he condemn'd her there as Prize; Did he offer to carry any other Ships to be condemned?

Braddinham. No, never.

Joseph Palmer Sworn.

He deposed, That he was on board the *Adventure Galley*, Capt. *Kidd* Commander, and that either the last of *April*, or the beginning of *May*, 1696, they sail'd from *Plymouth*, to *New-York*, and they took a *French* Banker by the way; that it was in *July* when they came to *New-York*, and Capt. *Kidd* offered any Man that would come aboard, a Share of what he took, and he was himself to have Forty Shares; and they were to give him Six Pound a Man for their Arms: That about the 6th of *February*, they set Sail from *New-York*, with about One Hundred and Sixty Men on board, for the *Madera's*, and so pursued their Voyage, as the last Witness depos'd, 'till they arriv'd at *Babskey*, in the Mouth of the *Red Sea*, in *July*, 1697. That there they waited for the *Moco* Fleet, about Three Weeks; and Capt. *Kidd* said, Come Boys, I will make Money enough out of that Fleet. That he sent his Boat in Three times, for Intelligence, and the third time they brought him Word, there were Fourteen or Fifteen Ships ready to sail, with *English* *Dutch*, and *Moorish* Colours, and that there was a great Ship with Red Colours,

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Colours, with her Fore-topfail loose, ready to sail; and Capt. *Kidd* ordered his Men to look out for the coming down of this Fleet, and one Evening, about the 14th or 15th of *August*, they came by, and the next Morning Capt. *Kidd* went after them, and fell into the middle of the Fleet, and fir'd a Gun after a *Moorish* Ship, and there being a *Dutch* and *English* Convoy they fired at him again; so he left the Fleet and went to *Caramar*. [and having given the same Account of the other Ships they met with, as the other Witnesses did, he proceeded to give an Account of taking the Ship mentioned in the Indictment] He deposed, That about the last of *January*, they took the *Quedah Merchant*, and that they sold Goods out of her, to the *Banians*, upon the Coast, to the Value of Ten or Twelve Thousand Pounds. That the rest of the Goods were carried to *Madagascar* and shar'd with the Money, as the other Witnesses had deposed: And he also gave the same Account of meeting Captain *Culliford*, the Pyrate, at *Madagascar*, and assisting him, as *Braddinham* had done.

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L. C. B. Ward. Whose Goods where they supposed to be, which were taken out of the *Quedah Merchant*?

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Palmer. The *Armenian* Merchants.

Clerk of Arraignment. Will the Prisoners ask this Witness any Questions?

Kidd. 'Tis in vain to ask any Questions.

L. C. B. Ward. Then what have you to say in your Defence?

Kidd. I had a Commission to take the *French* and Pyrates, and in order to that I came up with Two Ships, who had *French* Passes, and I call'd you all upon Deck to consult; and you know Mr. *Palmer*, I would have given them these Ships again but you would not, you all voted against it.

Kidd's Defence
as to the taking the *Quedah Merchant*.

Palmer. This Man [pointing to the *Armenian* in Court] offer'd you 20000 Rupees for the Ship, and you refus'd it. — Says Captain *Kidd* to his Men, These *Armenians* make such a Noise for the Ship, that I must say my Men Will not part with her; but there were not a Quarter of the Men

Men concerned in it. The *Armenians* came crying and wringing their Hands, and so indeed, some few of the Men went upon the Forecastle, and pretended they would not give them the Ship.

L. C. B. Ward. Since the Goods belong'd to the *Armenians*, What was the Pretence of a *French Pass*?

Palmer. I have heard of a *French Pass*, but I never saw any.

L. C. B. You speak of a Commission you had, you may have it read if you please.

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Then *Kidd's* Commission, for making Reprials on the *French*, was read, which was dated the 11th of *December*, 7 *W. III.* 1695.

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Captain *Kidd's* other Commission, for cruising on the *Pirates*, was also read; being dated the 26th of *January*, 7 *W. III.* 1695.

L. C. B. Well, What Use do you make of these Commissions to justify your self?

Kidd. The *Quedah Merchant* was under a *French* Commission, the Master kept a Tavern at *Surat*.

L. C. B. But then you should have condemned this Ship.

Kidd. I was not at the sharing of the Goods, I knew nothing of it.

L. C. B. Both the Witnesses swear you sold part of the Goods upon the Coast, and receiv'd the Money; and that Money, and the rest of the Goods you shar'd at *Madagascar*, pursuant to the Articles you set up.

Just. Powel. You have produc'd Letters Patents, which impowered you to take *Pirates*; Why did you not take *Culliford*? When the Question was put, Are you come to take us and hang us? You answered, I will fry in Hell before I will do you any Harm.

Kidd. That is only what these Witnesses say, I was not on board *Culliford*; I desire Mr. *Davis* may be call'd.

Davis appear'd.

Kidd. Pray give an Account, If you did not see a *French Pass*.

Davis.

Davis. I saw the Captain give some Passes to Captain *Elms*, to read at *Amboyna*; which the Captain said, were *French* Passes.

L. C. B. You can't say they had any relation to the *Quedah* Merchant?

Davis. No not I.

Bar. Hatsel. Have you any more to say, Captain *Kidd*?

Kidd. I have some Papers, but my Lord *Bellamont* keeps them from me; that I cannot bring them into Court.

L. C. B. What have you to say, *Churchill*?

Churchill. I desire Col. *Bass* may be call'd.

Col. *Bass* appear'd.

Churchill. I desire the Colonel would give an Account of my surrendering to him?

Col. *Bass.* About the 29th of *May*, 1699, I had an Account of some Persons, who were suppos'd Pyrates; and on my Landing in *West-Jersey*, the 4th of *June*, *Churchill* and *How* came and surrendered to me.

Dr. Oxenden. How came they here?

Col. *Bass.* I left them under Bail; they were sent over Prisoners, by my Successor?

L. C. B. What did they say to you, when they surrendered?

Col. *Bass.* They said, they had been in the *Indies*, and committed several Pyracies; and desired they might have the Benefit of the King's Proclamation. And they mentioned the *Moco Frigate*, and Capt. *Kidd*.

L. C. B. Did you take your self impowered to receive their Surrender?

Col. *Bass.* No, my Lord, I did not.

Clerk of the Arraignments. Robert *Lamley*, What have you to say?

Lamley. I was Servant to Mr. *Owens*, here is my Indenture; (*which was read.*)

Clerk of the Arraignments. What have you to say?

Jenkins. I was a Servant to Mr. *Buller*, as the King's Witnesses can prove.

Clerk of the Arraignments. *Gabriel Loff*, What have you to say?

Loff. I went to serve His Majesty, under Captain *Kidd's* Commission.

L. C. B. Did Captain *Kidd* take Notice of his Commission, in his Articles?

Palmer. Yes, my Lord, I have a Copy of the Articles.

L. C. B. But how came you to take part of the Money? You must needs imagine, when Captain *Kidd* did these extravagant Things, and divided the Money and Goods; he did not act according to his Commission.

Loff. I had but what they pleased to give me.

Clerk of the Arraignments. *Hugh Parrot*, What have you to say for your self?

Parrot. I came on board Captain *Kidd*, at *Madagascar*, understanding he had the King's Commission; and have been with him ever since.

L. C. B. You have acted with him, and shared with him. Could you imagine he was acting according to his Commission, when he did these Things.

Parrot. I thought I was safe, where the King's Commission was?

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L. C. B. *Richard Barlicorn*, What have you to say?

Barlicorn. I beg leave to produce some Evidence for my Reputation: Here is a Certificate from the Parish where I was born.

L. C. B. We cannot read Certificates.

Barlicorn. Then I desire *Benjamin Bond* may speak to my Reputation?

Bond. My Lord, I liv'd near him, 'till he was Thirteen or Fourteen Years old; and he behav'd himself very civilly, and came of very honest Parents.

L. C. B. What have you to say further?

Barlicorn. My Lord, I was Servant to Captain *Kidd*, and have been so six Years.

Clerk

Clerk of the Arraignments. Abel Owens, What say you for your self?

Abel Owens. I surrendered my self to Mr. *Ricles*, a Justice of Peace in *Southwark*, within the Time mentioned in the Proclamation: And then enter'd my self on Board, in His Majesty's Service, where I was seiz'd.

L. C. B. A Justice of Peace is not within the Proclamation; but this may commend him to the King's Mercy.

Clerk of the Arraignments. Darby Mullins, What do you say for your self?

Mullins. I came in upon the King's Proclamation: Indeed, I was ready to die of the Bloody Flux, and could not go my self; but I sent my Name in, to the Governour.

Dr. Oxenden. How came you to leave Captain *Kidd*?

Mullins. He us'd me very hardly, and therefore I left him.

L. C. B. You had a Dividend of the Money and Goods.

Mullins. He gave it me, and afterwards took it from me.

L. C. B. Though you quitted Captain *Kidd's* Ship, you went into *Culliford's*.

Then Captain *Kidd* call'd Mr. *Say*, as a Witness for him.

He depos'd, That he heard Captain *Kidd's* Surgeon say, That Capt. *Kidd* had done nothing but what he could answer.

Kidd calls Witnesses to shew he had done the Government good Service in the West-Indies.

Captain *Humphreys* call'd.

He depos'd, That he knew Captain *Kidd* in the *West-Indies*, in the beginning of the late War; and he had the Applauses of the General there, for his good Services.

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L. C. B. That was before he turn'd Pyrate.

Captain *Bond* call'd.

He depos'd. That *Kidd* was very useful in the *West-Indies*, in the beginning of the late War.

Bar. *Hatsel*. To be sure they had a good Opinion of him in 1695, when they granted him his Commission.

Kidd. It can't be made appear I have been Guilty of Piracy, I never designed any such Thing; and had *French Passes* to have justified what I did, if my Lord *Bellamont* had not taken them from me.

L. C. B. But you should have Condemn'd the Ships, if they had been Prize.

Kidd. I could not, because of the Mutiny in my Ship.

* Then the Lord Chief Baron directed the Jury, and told them, " That to make the Fact Piracy, " there must be a practical and felonious taking " upon the High Sea, within the Jurisdiction of " the Admiralty of *England*, the Goods of a " Friend; viz. Such as are in Amity with the " King. That if this *Quedah* Merchant had be- " long'd to the *French*, or the Ship had been " sailed under *French Passes*; then it was lawful " Prize, and liable to Confiscation. But if they " were the Goods of Persons in Amity with the " King, and the Ship was not Navigated under " *French Passes*; then it was very plain, it was a " Piratical Taking. And he did not observe, there " was any manner of Proof of a *French Pass*: " And if there had, he ought to have condem- " ned the Ship, before he divided the Goods, as " his Commission required him. But instead of " that, he had taken upon him to share the Ef- " fects; and continued in the Ship, 'till he was " taken in it, by my Lord *Bellamont*, in the *West-Indies*.

As to those who were Servants on board Cap- tain *Kidd's* Ship, the Lord Chief Baron told the Jury, " There must be Freedom of Will to de- " nominate a Fact, either Felony or Piracy; and " if these Men did go under the Compulsion of " their

* The Chief Baron directs the Jury, as to the Piracy on the *Quedah* Merchant.

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He tells them, if the Ship and Goods be- long'd to Per- sons in Amity with this Crown, the taking was Piracy, un- less they sail'd under *French Passes*.

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He shews, That free- dom of Choice was necessary to denominate a Fact, either Treason or Felony; and therefore in- timates, that the Case of the Servants should be di- stinguish'd from the rest,

“ their Masters, and not voluntarily, it might
 “ distinguish their Case from the rest. That it
 “ appeared, indeed, by the Evidence, that those
 “ Persons received their Shares; but then, they
 “ said, they accounted for them to their respec-
 “ tive Masters. It was true, a Servant was not
 “ bound to obey his Master, but in lawful Things;
 “ but these Servants urged, they thought this
 “ was so; they knew nothing to the contrary,
 “ but that their Masters acted according to the
 “ King’s Commission; and therefore, he recom-
 “ mended their Case to the Consideration of the
 “ Jury.

“ As to those who would excuse themselves, as
 “ being under Captain *Kidd’s* Command; that
 “ would justify them in nothing, but the obey-
 “ ing his lawful Commands. And it was not con-
 “ tested, but that these Men knew, and were sen-
 “ sible of what was done; and did take part in it,
 “ and shar’d what was taken. And if the taking
 “ of this Ship, and Goods, was unlawful, then
 “ these Men could claim no Advantage from act-
 “ ing under *Kidd’s* Commissions: Because those
 “ Commissions gave them no Authority to act
 “ what they did. They acted quite contrary to
 “ them.

That as to those, who would screen themselves, as being under *Kidd’s* Command, they knew the Enterprize to be unlawful, and shar’d the Booty with him.

“ As to those, who said they surrendered on
 “ the King’s Proclamation; they had not brought
 “ themselves within the Benefit of it: And there-
 “ fore, that Matter could not be considered in a
 “ Course of Law; but they must apply another
 “ Way for the King’s Mercy. This Court must
 “ proceed according to the Rules of Law and Ju-
 “ stice.

That as to those who surrendered, they had not done it pursuant to the Proclamation, and could claim no Benefit by it here.

Then the Jury withdrew, and after half an
 Hours Recess, brought in their Verdict: *Viz.*
 That *Lamley*, *Jenkins*, and *Barlicorn*, the Three
 Servants, were *Not Guilty*. And that Capt. *Kidd*,
 and the other Six, were *Guilty*.

Page 478. The Prisoners are all Con- victed, but the three Ser- vants.

After which, they were all Ten Arraign'd upon Four other Indictments, for Piracy.

3d Indict-
ments for Pi-
ratically tak-
ing a *Moorish*
Ship,

The first of which Indictments sets forth, " That
" the Prisoners, the 20th Day of *September*, in
" the 9th Year of the King, by Force and Arms,
" upon the High Sea; in a certain Place, about
" Fifty Leagues distant from the Port of *Cara-*
" *war*, in the *East-Indies*, and within the Jurif-
" diction of the Admiralty of *England*; Did, Pi-
" ratically and Feloniously, set upon, board, break,
" and enter, a *Moorish* Ship, belonging to cer-
" tain Persons, to the Jurors unknown: And Pi-
" ratically, and Feloniously, did make an Assault
" upon the Marriners in the said Ship; then in
" the Peace of God, and of our Sovereign Lord
" the King being; and did put them in Corporal
" Fear of their Lives. And did Piratically and
" Feloniously take, steal, and carry away, out of
" the said Ship, One Hundred Pound Weight of
" Coffee, of the Value of Five Pound; Sixty
" Pound Weight of Pepper, of the Value of Three
" Pound, &c. Being the Goods, Chattels, and
" Monies, of certain Persons, to the Jurors un-
" known: And took them out of the Custody of
" the Mariners of the said Ship, at the Time and
" Place aforesaid. Against the King's Peace, his
" Crown and Dignity, &c.

To which Indictment, the Prisoners respective-
ly pleaded *Not Guilty*.

3d Indict-
ment For Py-
racy on ano-
ther *Moorish*
Ship.

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The Prisoners were likewise Arraign'd upon
another Indictment; for Piratically and Feloni-
ously taking another *Moorish* Ship near *Callicut*, in
the *East-Indies*; on the 27th of *November*, in the
9th Year of the King.

To which they respectively pleaded *Not Guilty*.

4th Indict-
ment, For Py-
racy on a
Moorish Ketch.

They were also Arraign'd upon another Indict-
ment, for Piratically and Feloniously taking a
Moorish Ketch, near *Callicut*, in the *East-Indies*;

ON

on the 28th of *December*, in the 9th Year of the King.

To which they severally pleaded *Not Guilty*.

They were again Arraign'd upon an Indictment, For Piratically and Feloniously taking a *Portuguese Ship*, near *Callicut*, in the *East-Indies*; on the 20th of *January*, in the 9th Year of the King.

5th Indictment, For Piracy on a *Portuguese Ship*.

To which Indictment, they also, severally, pleaded *Not Guilty*; and then the Court adjourn'd.

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The 9th of *May*, 1701, the Court being set, a Jury was Sworn, and charg'd with the Prisoners, on the two first of these Indictments; which were open'd by Mr. *Knapp*. And then,

The Tryal on the 2d and 3d Indictments for Piracy, comes on.

Robert Braddinham was Sworn.

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Mr. *Braddinham* depos'd, (as he had done before) that they sailed from *Plymouth*, in the *Adventure-Galley*, under the Command of Captain *Kidd*; in the beginning of *May*, 1696. That they continued some time at *New-York*, and from thence they sailed to the *Madera's*, to *Madagascar*, and from thence, to an Island call'd *Babskey*, in the Mouth of the *Red Sea*; where they fell in with the Fleet from *Moco*, and were repuls'd.—

That from *Babskey*, they sail'd for *Caramar*; and in their Way, in *September*, 1697, they met with a *Moorish Ship*, commanded by Captain *Parker*; (which is the Ship mentioned in the first of these two Indictments) That they took Captain *Parker* out of this Ship, for a Pilot; and a *Portuguese* for an Interpreter. And Captain *Kidd* order'd some of the *Moors* to have their Hands bound behind them; and to be drubb'd with a naked Cutlace. And he took out of the Ship, some *Pepper*, *Coffee*, *Arabian Gold*, and other Things: And let the Ship, and the rest of the Men go; who were about Thirty in Number.

Evidence of taking the first *Moorish Ship*.

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Dr. Oxenden. What Country-man was Captain Parker?

Braddinham. He told me, he was an *English* Man.

Mr. Knapp. Were all the rest of the Prisoners, at the taking of this Ship?

Braddinham. Yes, Every one of them.

Just. Turton. What Goods did they take out of this Ship?

Braddinham. Several Bales of Pepper and Coffee, and some Myrrh; which is a Gum.

Sol. Gen. What did they do with it?

Braddinham. Captain Kidd made Pitch of the Myrrh.

Sol. Gen. Where did they go, after taking of this Ship?

Braddinham. To *Carawar*, which is an *English* Factory: And the Factory sent some Men on board, and demanded Captain Parker, and the *Portuguese*. And Kidd kept them in the Hold, and denied they were a-board. I suppose, the Factory had Notice from the Mariners we let go, of their being aboard; for they went to *Bombay*, which is about Forty Leagues from *Carawar*.

Evidence of
taking the 2d
Moorish Ship.

Afterwards, Captain Kidd cruised on the Coast of *Malabar*; and on the 17th of *November*, took another *Moorish* Ship, commanded by Skipper Mitchel, a *Dutchman*; (which is the Ship mentioned in the second of these two Indictments) being about One Hundred and Fifty Tun. In this Ship, there were two Horses, and eleven or twelve Bails of Cotton. And Captain Kidd having set the Men ashore, kept the Ship, and carried her to *Madagascar*.

Bar. Hatsfel. How do you know this Skipper Mitchel was a *Dutchman*?

Braddinham. He told me so: He came a-board us, and took Arms under Captain Kidd.

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Sol. Gen. Were all these Prisoners on board, when this Ship was taken?

Braddinham. Yes.

Sol. Gen. What did they do with that Ship, after they came to *Madagascar*?

Braddinham.

Braddinham. They sunk her in the Harbour, that she might be convenient for Vessels to careen by. And when we came to *Madagascar*, there came off a *Canoe* from the *Moco* Frigate, Captain *Culliford* Commander; (who was a Pirate) and they said, they heard Captain *Kidd* was come to take and hang them. And *Kidd* said, It was no such Thing; and swore he would be true to them, and do them no Harm. And Captain *Kidd*, and *Culliford*, became very friendly, and made Presents to one another: And *Kidd* supply'd *Culliford* with two Guns.

Dr. Newton. Was there any Division of the Goods, or Money taken?

Braddinham. After we came to *Madagascar*, Captain *Kidd* ordered the Goods to be hoisted out, and shar'd; and Captain *Kidd* had Forty Shares himself, and the rest of the Crew, had some a whole Share, and others half Shares, according to the Articles?

Kidd. Had you any Share?

Braddinham. Yes.

Kidd. Did not you come a-board, and rob the Surgeon's Chest?

Braddinham. No, I did not.

Kidd. You are a Rogue: I did not divide the Goods, but the Men did what they pleas'd; and you took your Share, and saw the *French* Passes. This Fellow us'd to sleep five or six Months together, in the Hold.

Just. Turton. I assure you, he gives a very good Account of the Matter.

Bar. Hatsel. Why did you give him a Share then?

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Kidd. Because he was Surgeon. As for the Goods, they did what they pleas'd, and took them amongst them. They went to the Island, and left me with about Forty Men in the Ship; and they laid wait for me, to kill me.

Mullins. My Lord, I was a Passenger a-board Capt. *Shelly's* Ship.

Sol. Gen.

Sol. Gen. How came he to leave Captain Kidd at *Madagascar*?

Braddinham. He went a-board Captain *Culliford's* Ship: There were Sixty or Seventy Men, went a-board *Culliford*.

Palmer was Sworn.

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He repeated the Evidence he had given at the former Tryal, which was agreeable to what *Braddinham* had sworn in both. And,——

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Palmer added, That at the *English* Factory at *Carawar*, some of *Kidd's* Men left him; and others being about to get away with the Boat, he prevented them, and had them whipp'd at the Gun. And that when they came to the *Malabar* Island, (where his Cooper had his Throat cut) *Kidd* sent his Men ashoar, and order'd them to divide themselves into Parties, and burn all the Houses they came near, except those that had white Flags upon them. And he saved those Houses, because the People helped him to Water the Ship.

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Just. Turton. You may make your Defence, Captain *Kidd*, First, as to the Ship taken in *September*: Then, for that in *November*.

Kidd. What is it the nearer for me to speak, I have no Witnesses for these Things. Here are all these Men saw the *French* Pass.

Palmer. Indeed Captain, I never saw it.

Kidd. You left my Ship, with Ninety Five Men more, and went a Rogueing afterwards.

Sol. Gen. Why did you go on board *Culliford*, the *Pirate*?

Kidd. I had a Design to take that Frigate; but was threatned to be shot in the Cabbin, by such Villains as these.

Palmar. I know nothing of that; but I'm sure I sav'd your Life on the *Malabar* Island, when you burnt the Boat.

Then *Kidd* called Colonel *Hewson* to his Reputation.

He depos'd, That *Kidd* was with him in two Engagements against the *French*, about Nine Years ago;

ago; and fought as well as any Man. That the *French* were six Ships, and they were but two. That Captain *Kidd's* Men would have gone a *Pi-
rateering* once, and he refused it; and they seiz'd upon the Ship. And when *Kidd* went this Voyage, he consulted the Deponent; who told him, he thought he had enough already. But my Lord *Bellamont* told *Kidd*, there were Great Men concern'd, and they would stop his *Brigantine* in the River, if he did not go.--- That he had heard *Kidd* say, he would be shot to Death before he would turn Pirate: And that he was very serviceable in the *West-Indies*.

Thomas Cooper, was also call'd to *Kidd's* Reputation.

He depos'd, That *Kidd* brought his Ship into the King's Service, in the beginning of the late War; and that he, and the last Witness, fought Mr. *Du Case* a whole Day, and got the better of him: And that *Kidd* behav'd himself very well, in the Face of the Enemy.

Davis appear'd.

Kidd. Did not you see the *French* Passes?

Davis. Yes, I saw them.

Sol. Gen. How do you know they were *French* Passes.

Davis. He told me they were *French* Passes, I did not know, I could not read them.

Kidd. My Lord, in pursuance of my Commission I took those Ships which had *French* Passes on board, and my Lord *Bellamont* took them by Force from me.

Just. Turton. But, Why did you not condemn the other Ships as well as the *French* Banker?

Kidd. I could not carry these Ships home, by reason my Men left me: Mr. *Braddinham*, Are not you promised your Life to take away mine?

Just. Turton. He is not bound to answer that Question: Perhaps there can be no other Witnesses had, than Persons in his Circumstances.

Then.

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All the Prisoners convicted on the Two last Indictments, but the Servants.

Then Mr. Justice *Turton* directed the Jury in every Point, as the Lord Chief Baron *Ward* had done in the former Tryal for Piracy; after which the Jury withdrew, and within half an Hour brought in their Verdict: That *Lamley*, *Jenkins*, and *Barlicorn* were *Not Guilty*, and that Captain *Kidd* and the other Six were *Guilty*.

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The Tryal on the 4th and 5th Indictments for Piracy, comes on.

Then they were all Ten arraign'd upon Two other Indictments, for Piracy; the one for taking a *Moorish* Ship, Four Leagues from *Calicut*, and the other for taking a *Portuguese* Ship, Twelve Leagues from *Calicut*.

To which Indictments, they severally pleaded *Not Guilty*, and a Jury was charg'd with them.

Three of them retract their Plea, and plead *Guilty*.

Afterwards, *Churchill*, *How*, and *Owens* retracted their Plea, and pleaded *Guilty*.

Then Mr. *Knapp*, and Mr. *Sollicitor* opened both these Indictments, and the Evidence against the rest of the Prisoners. And,

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Mr. *Braddinham*, the Surgeon, was Sworn again.

Evidence of taking the Vessel in the 4th Indictment.

He gave the same Evidence, as to their sailing from *England* and *New-York*, &c. 'till they came to the Coast of *Malabar*, as he had done in the former Tryals; and as to the Ketch mentioned in the Indictment, he deposed, That it was taken on the *Malabar* Coast, about *December*, 1697, and that one of the Boat's Crew was wounded at the taking it.

Sol. Gen. What was there in the Vessel?

Braddinham. Some Tubs of Sugar Candy, Tobacco, &c. and they were carried aboard and shar'd, Two Tubs and a half of Sugar Candy to a Mess.

Clerk of Arraignment. Had the Prisoners at the Bar any Share?

Brad-

Braddinham. Yes, It was divided into Shares and half Shares, according to the Articles; and after they had divided the Goods they burnt the Ship, and the Mariners, who were *Moors*, were driven ashore.

Knapp. What did you meet with afterwards? Page 495.

Braddinham. In *January*, 1697, We met with the *Portuguese* Ship on the Coast of *Malabar*, and took out of her some Opium Powder, *East-India* Goods, &c. about the Value of Five Hundred Pound; and after Captain *Kidd* had plundered this Ship, several *Dutch* Ships gave him Chase, and he was forc'd to leave her. Evidence of the taking the *Portuguese* Ship mentioned in the 5th Indictment.

Sol. Gen. What did he do with the Goods?

Braddinham. He sold the Opium on the Coast, and the rest he kept for Provision; and all the Prisoners had their Share of the Money. After this Capt. *Kidd* took the *Quedah Merchant*, and another *Moorish* Ship; and he plunder'd about a Dozen *Malabar* Boats, and then let them go.

Joseph Palmer Sworn.

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He gave the same Account of the Voyage he had done in the former Tryals, and agreed with *Braddinham* in the Evidence he gave of the taking the *Moorish* Ketch, and the *Portuguese* Ship mentioned in these Two Indictments.

Then Mr. Justice *Turton* directed the Jury, and intimated to them, That the Case of the Three Servants ought to be distinguished from the rest; and the Jury being withdrawn, in a little time returned with their Verdict, viz.

Page 497.

That *Kidd*, *Loffe*, *Parrot*, and *Mullins* were Guilty; and that *Lamley*, *Jenkins*, and *Barlicorn*, (the Three Servants) were Not Guilty.

Page 498.
Kidd, *Loffe*,
Parrot, and
Mullins con-
victed.

Robert

Page 500.
The Prisoners who
 were convicted,
 are condemned
 with *Hickman* and
Eldridge, Two
 other Pirates.

Robert Hickman, and *John Eldridge*, having
 also been convicted of Piracy, were call'd to their
 Sentence, together with *William Kidd*, *Nicholas*
Churchill, *James Howe*, *Gabriel Loffe*, *Hugh Par-*
rot, *Abel Owens*, and *Darby Mullins*; and having
 nothing material to offer, in Arrest of Judgment,
 Sentence of Death was pronounc'd upon them, by
 Dr. Oxenden.

The End of the *First* Part of the *Fourth*
 Volume.



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